

Carlton Fields Releases Results of the 12th Annual Class Action Survey

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TAMPA, FL – Carlton Fields released its 12th annual Class Action Survey results which provide an overview of important issues and practices related to class action matters and management. The annual publication reports on historical trends captured since the survey's inception and includes information related to emerging issues in class action litigation. This year's survey highlights a continuing trend of expense growth. Class action defense spending by companies has increased for eight consecutive years to a record \$3.5 billion in 2022. Companies also reported facing almost a full additional class action in 2022 over 2021, reversing a two-year decline in average number of matters per company since 2019. Additionally, while class action caseloads are expected to be larger in 2023, companies continue to decrease the number of in-house attorneys dedicated to class actions. The survey results also indicate that companies expect more consumer fraud class claims, potentially impacting their bottom-line, as social media poses increased reputational, brand, and financial risks. Additionally, while a quarter of companies predict data privacy as the next wave of class actions, only 10% saw those claims actualize as posing a significant risk. Perceived risk of data privacy actions has dropped because companies believe they can better predict outcomes and reduce risk. Other key highlights in this year's Class Action Survey include:

- **Labor and Employment Takes Largest Share of Budgets and Matters:** Labor and employment litigation accounts for nearly 35% of class action spending and 34% of matters managed by in-house legal departments. Employment class actions also dominated the remaining pandemic-related class actions, at 50%.
- **An Overwhelming Concern of In-House Counsel is the Growth of Baseless Claims:** Six out of 10 in-house counsel reported that the growth in baseless putative class actions poses a substantial risk to their companies.

- **The Best Tool for Cost Control is Using Trusted Counsel:** Most companies reported using no more than five outside law firms for class action defense, and 30% reported using one firm in a supervisory role.
- **Doing More With Less – Number of In-House Attorneys Dedicated to Class Actions Decreases:** While in-house attorneys are predicting more class actions, companies continue to decrease the number of attorneys dedicated to class actions and devote less hours per attorney to these cases.
- **Class Action Settlements at the Lowest Level in Five Years:** The number of settlements dropped significantly in almost all areas of litigation, including class actions, while settlements on an individual basis rose to nearly half of settlements.
- **Effective Class Action Defenses Include Early Motions for Summary Judgment:** Absences of commonality and predominance, and lack of actual injury, topped the list as the most successful defenses to putative class actions. Additionally, 64% of in-house counsel reported that motions for summary judgment before class certification were an effective defense.
- **AFA Usage Shows Slow Increase:** The percentage of companies using alternative fee arrangements continues to increase, yet less than half of companies are using them to manage class actions.

The 2023 Carlton Fields Class Action Survey is comprised of interviews with general counsel or senior legal officers at more than 400 *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. To download the 2023 Carlton Fields Class Action report, please visit www.classactionsurvey.com.

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