

**CARLTON
FIELDS**

2024

**CARLTON FIELDS
CLASS ACTION SURVEY**

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

TABLE OF CONTENTS

- 3 Introduction
- 4 Key Trends in Class Actions
- 6 Class Action Spending and Budgets
- 11 What's Next for Class Actions
- 17 Caseload, Law Firms, and In-House Resources
- 26 Resolution of Class Actions
- 34 Cost Control and Use of AFAs
- 43 Current Impact of the Pandemic on Class Action Filings
- 44 Use of Generative AI in Class Action Defense
- 49 The Future of Class Actions
- 52 Methodology and Approach
- 52 About Carlton Fields

INTRODUCTION

Carlton Fields is pleased to share its 13th 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 another straight year, and it is expected to remain one of the fastest-growing areas of legal spending in 2024. More companies than ever are facing class actions, and the current portfolio by company is the second-highest on record. Corporate counsel are anticipating unprecedented growth for their class action dockets in 2024 and are adding headcount to manage these new matters.

The *2024 Carlton Fields Class Action Survey* is based on interviews with general counsel or senior legal officers at more than 300 *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 report. As always, we aspire to provide valuable information that will assist your company and its legal department in managing class litigation both effectively and efficiently.

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KEY TRENDS IN CLASS ACTIONS



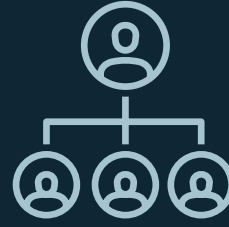
Defense Spending on Class Actions
Hits New Record – Another Year of
Growth



Labor and Employment Accounts for
More Than 4 of 10 Class Actions, and
Will Dominate the Next Wave



Companies Expect Record Number of New Class Actions Next Year



Companies Add Headcount in Legal Department to Manage Class Actions, Bucking Four-Year Trend



Individual Settlements Surge to 77% of All Class Action Settlements This Year



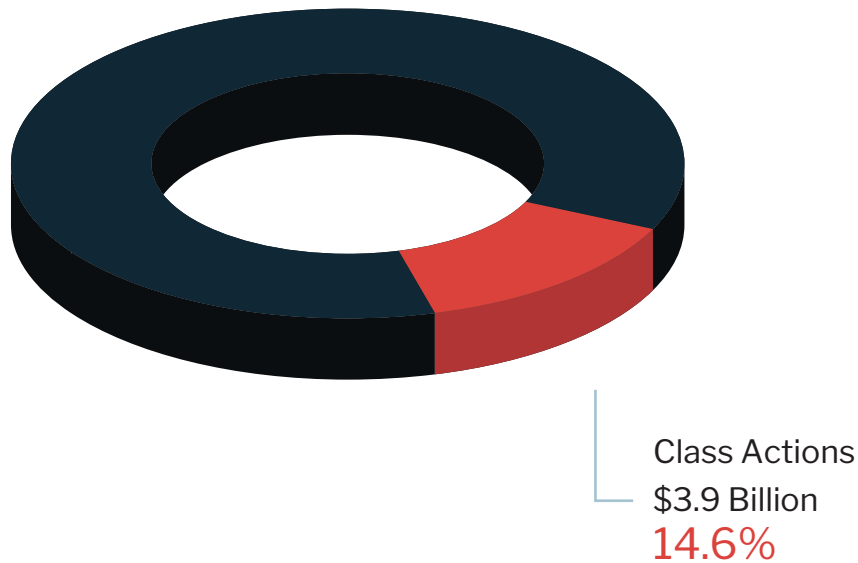
Artificial Intelligence and Technology Will Make Management of Class Action Claims More Complex Moving Forward

CLASS ACTION SPENDING AND BUDGETS

Class Action Defense Spending Takes Even More of the Corporate Legal Budget

Spending on class actions increased to account for 14.6% of corporate legal spending, up from 14.4% last year. Spending on class actions now approaches \$4 billion. Class action spending remains one of the fastest-growing areas of legal spending. See page 7 for spending history.

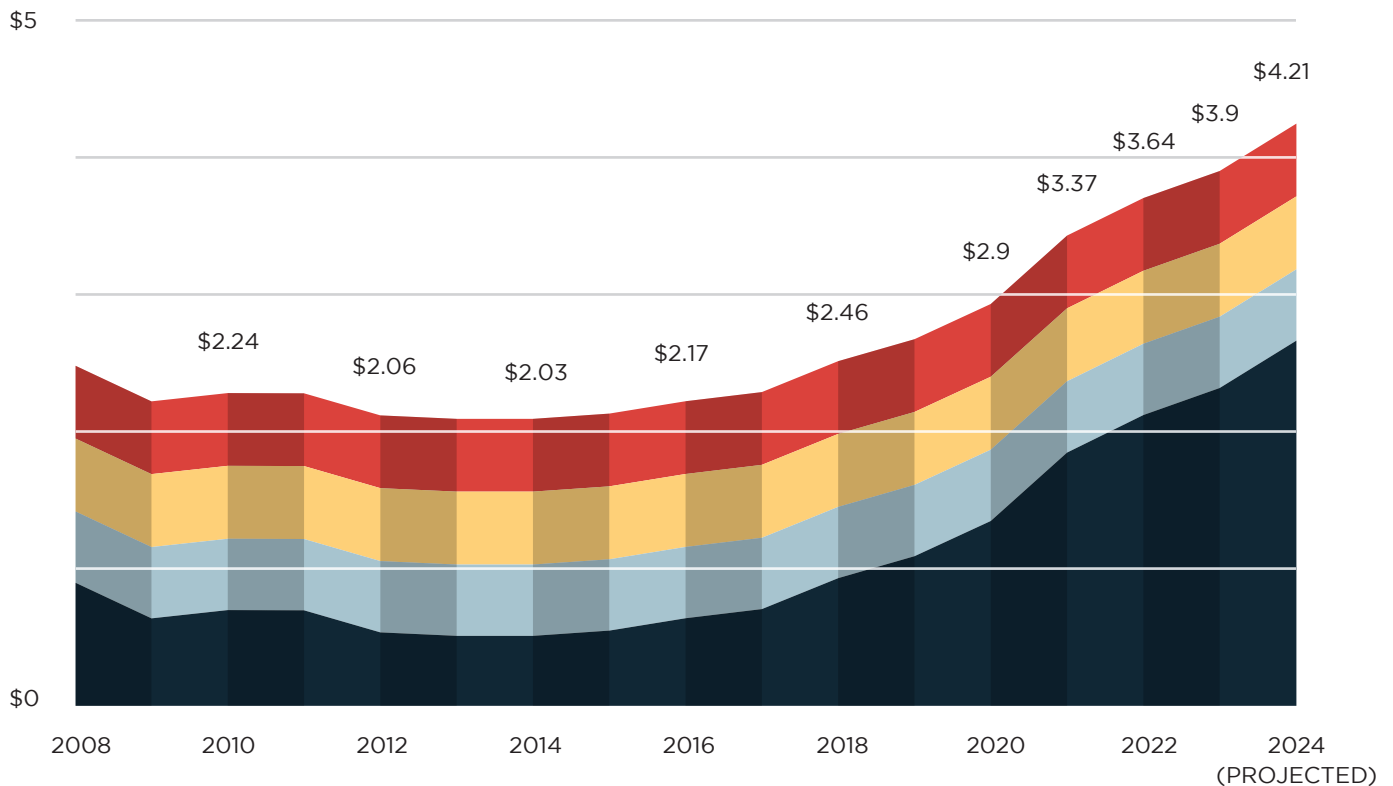
**\$3.9 Billion Spending on Defense of Class Actions by U.S.-Based Companies
WITH MORE THAN \$1 BILLION IN REVENUE**



Spending on Class Actions Heads Up for Another Year

Corporate legal spending on defending class actions is expected to grow at 6.8% — one of the highest growth rates in legal spending. Increased spending on class actions has three major drivers: more companies are facing class actions, increased complexity of claims, and larger claims.

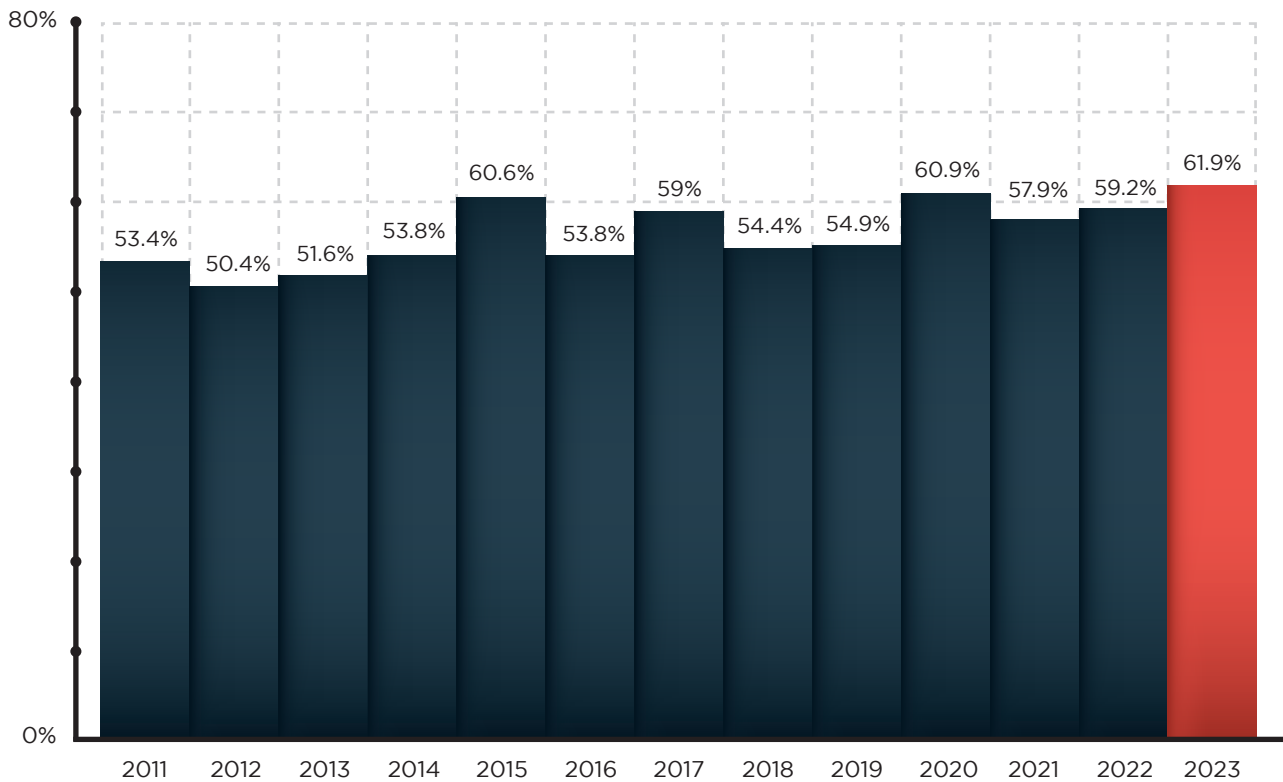
U.S. Corporate Legal Spending on Class Actions
\$ BILLIONS



Companies Facing Class Actions Registers a New Record

The percentage of companies facing class actions has reached the highest level in 13 years. Four key drivers include activist workforces, data privacy concerns, use and misuse of social media, and plaintiff creativity and aggressiveness.

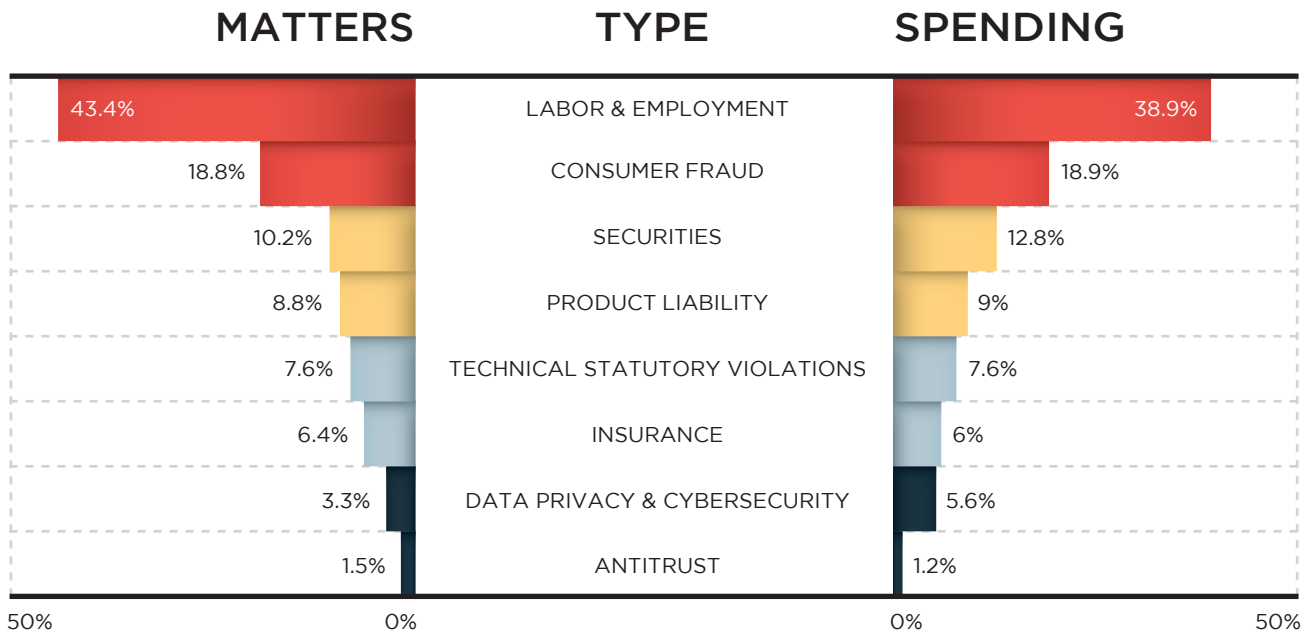
Companies With Class Actions
PERCENT OF COMPANIES



Labor and Employment Takes Largest Share of Budget and Matters, Consumer Fraud Second

Labor and employment is the single largest component of both matters and spending by a wide margin. Consumer fraud takes a clear second place. Securities edges out product liability and technical statutory violations.

Class Actions and Annual Spending Breakdown by Type
PERCENT OF MATTERS AND SPENDING

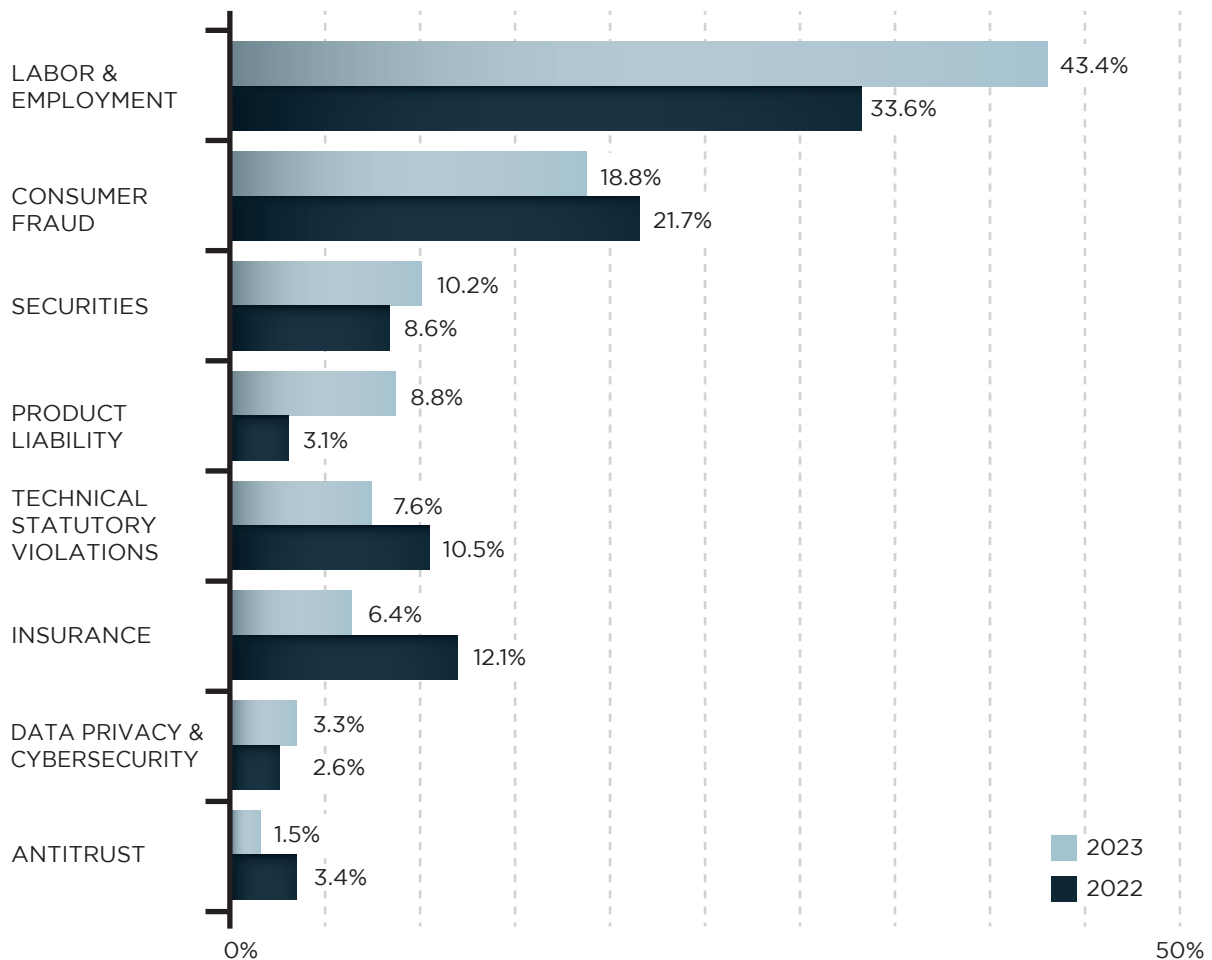


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Labor and Employment Class Actions Show Major Growth

Labor and employment class actions are up substantially as employee activism surges. Consumer fraud decreased slightly. Note the big increase in product liability as companies introduce new products or product upgrades, especially when new products include new technologies or new uses.

Class Actions Breakdown by Type
PERCENT OF MATTERS



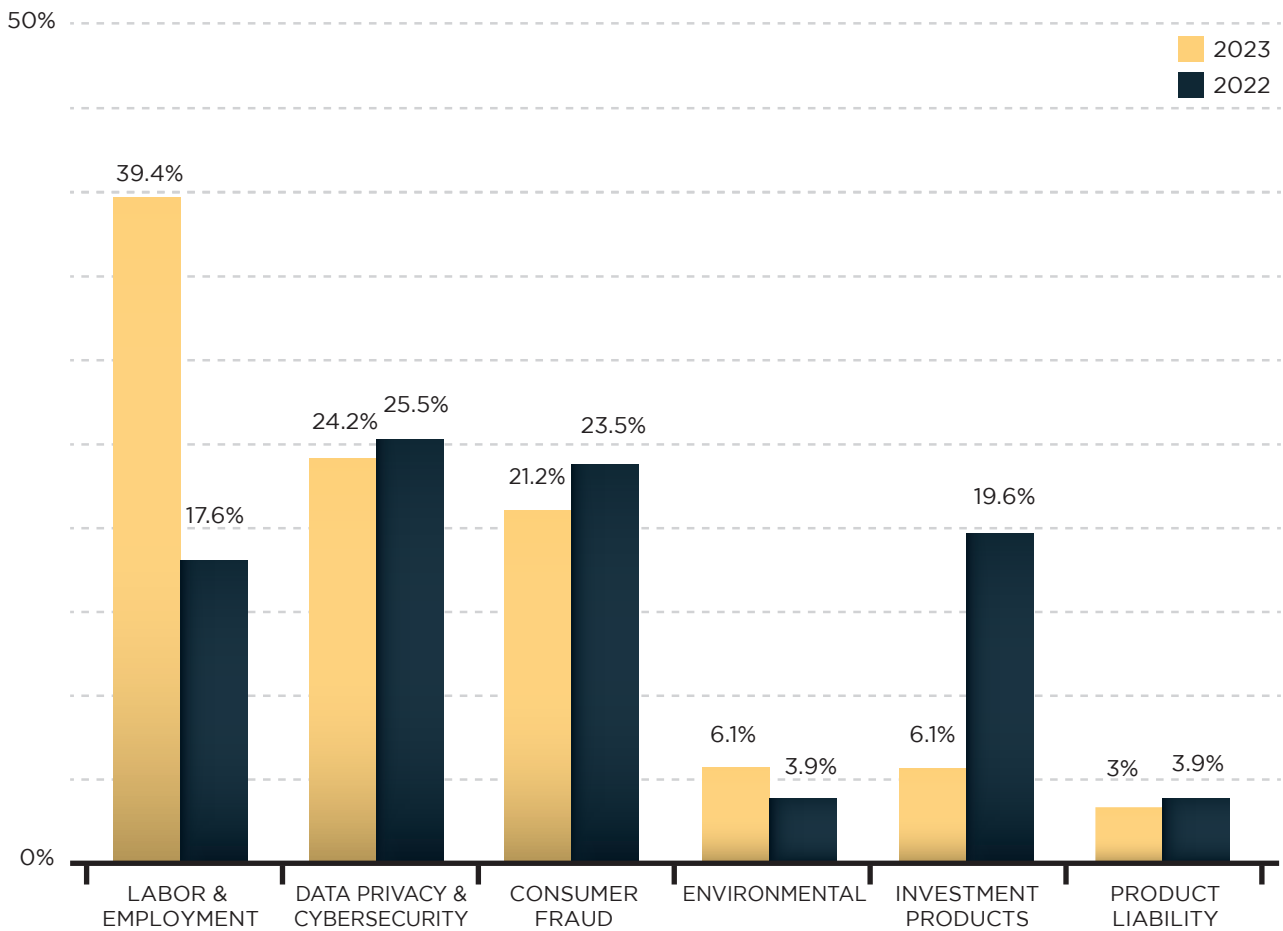
Note: Insurance claims do not include COVID-19 claims and are mostly tied to financial products and offerings or claims relating to disasters.
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WHAT'S NEXT FOR CLASS ACTIONS

Labor and Employment Drives Next Wave of Class Actions

Labor and employment more than doubled as the predicted next wave of class actions. Primary reasons include workforce activism, tension over hybrid work policies, layoffs, growing discrimination claims, and unionization attempts at 40-year highs. Data privacy inched down from last year. Consumer fraud slipped marginally but remains the third-biggest driver of the next wave due to product and sustainability claims. Investment product lawsuits declined, coinciding with the collapse of cryptocurrency exchange FTX.

Next Wave of Class Actions
PERCENT OF COMPANIES



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IN THEIR OWN WORDS:

CORPORATE COUNSEL ON THE NEXT WAVE OF CLASS ACTIONS

What do you see as the next wave of new class action lawsuits?



There will be additional ADA-related class actions, and cases related to greenwashing — making claims your product is good for the environment or organic, when it's not.

– Senior Vice President, Head of Litigation
Global Insurance Company

Claims specific to collecting information without consent, which is related to privacy. Also, additional wage and hour claims.

– Vice President, Associate General Counsel
Leading Retail Company

They will be related to benefits and specifically retirement benefits. There will be more employment-related class actions.

– Vice President and General Counsel
Large Private University

Any class actions related to consumer regulatory are always a threat, and, of course, any cyber/data breaches.

– Deputy General Counsel
Fortune 500 Bank Holding Company

ESG-related class actions, and class actions related to not doing enough to protect the environment or human rights. Perhaps some privacy-related cases as well.

– Senior Corporate Litigation Counsel
Multinational Food Conglomerate

We have dealt with issues related to how we pay out claims related to the specific type of software we use. Also, employment class actions will continue.

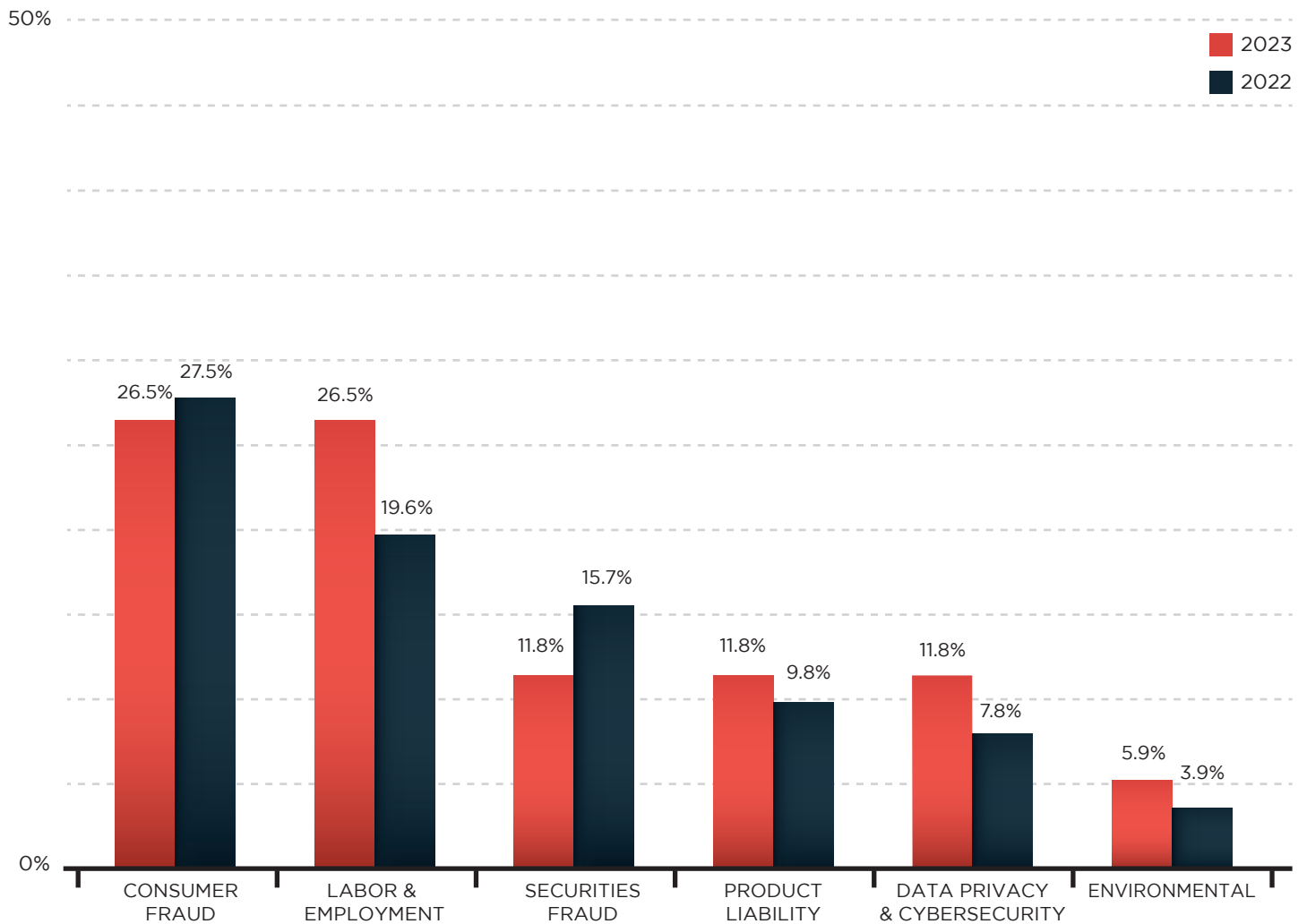
– Complex Litigation Counsel
Fortune 500 Insurance Company



Labor and Employment, Consumer Fraud Pose Top Risks

Labor and employment ties with consumer fraud for riskiest class actions at 26.5% each. Companies fear repercussions of activist workforces and backlash from layoffs and increased discrimination claims. Companies see consumer fraud as posing a comparable threat as they report new product introductions and social media creating a ripe atmosphere for plaintiffs to find reasons to file a claim. Data privacy is expected to pose a greater risk as increased hacking and generative AI bring new threats. Environmental class actions rose to inclusion in 2023, although still small at 5.9%.

Class Actions Posing the Biggest Risk
PERCENT OF COMPANIES



Note: Chart does not add up to 100%. Excludes other responses under 3%.
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IN THEIR OWN WORDS:

CORPORATE COUNSEL ON THE TYPE OF CLASS ACTIONS POSING THE BIGGEST RISK

What kind of class action poses the biggest risk to your organization?



Any related to consumer fraud, like mislabeling or misrepresenting a product, as well as wage and hour class actions, especially in California.

– Vice President, Associate General Counsel
Fortune 500 Retail Company

Any class actions that go straight to the heart of the business like environmental or product liability.

– Chief Litigation Counsel
Large Food Company

Straight wage and hour cases because we have a high number of temps in our warehouses, and there is a large amount of turnover and lots of heads, so it's risk by numerosity.

– Associate General Counsel
Fortune 500 Transportation Company

Consumer product-related class actions. They are harder to manage because the numbers get larger quickly. It also goes to our reputation.

– Counsel, Global Litigation
Fortune 500 Retail Company

For us, it's the constant barrage of wage and hour claims. They can add up and get very expensive.

– Vice President, Deputy General Counsel
Fortune 500 Retail Company

We are always most concerned about data breaches and any cybersecurity attack involving customer data.

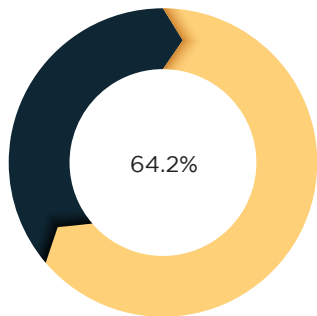
– Senior Corporate Litigation Counsel
Large Utilities Company



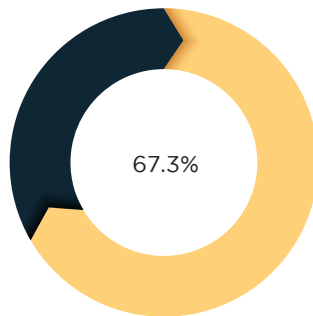
Companies Facing Labor and Employment Class Actions Jump Again

Almost 80% of companies report having faced a labor and employment class action in the last five years. As discussed on page 9, labor and employment now accounts for 43.4% of the class action portfolios at the surveyed companies.

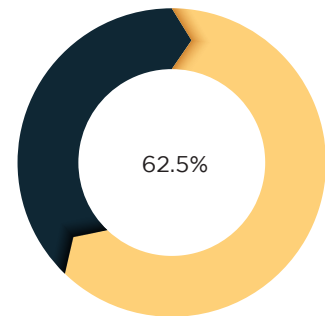
Faced Labor & Employment Class Action in Last 5 Years
PERCENT OF COMPANIES



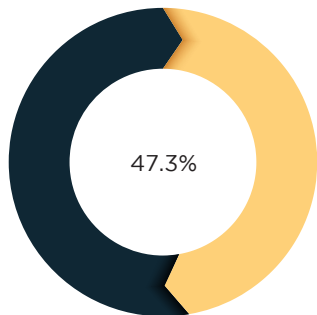
2018



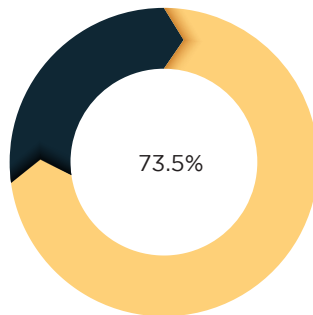
2019



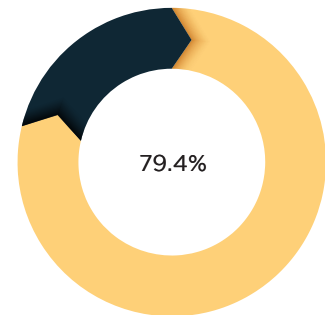
2020



2021



2022



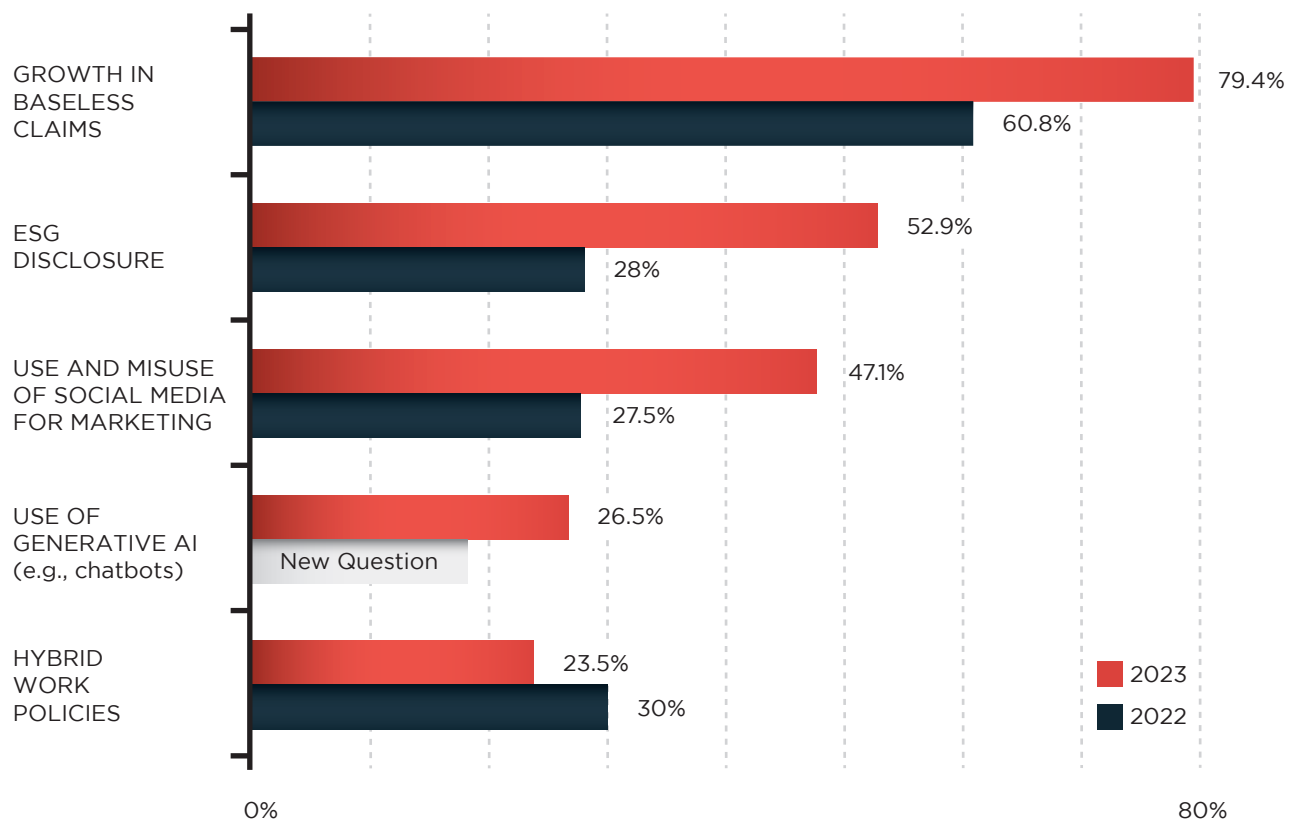
2023

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Growth in Baseless Claims Is Largest Concern; ESG and Social Media Bring Additional Class Action Risk

Nearly eight of 10 companies agree that baseless claims bring the largest risk of class actions. They report these actions have no merit, but they are forced to defend them. Top legal decision-makers believe courts are reluctant to dismiss or slow these actions as they grow. About 24% of companies see hybrid work policies as inviting class actions in the labor and employment arena. Environmental, social, and governance (ESG) issues pose a substantial risk as companies point to new disclosure rules. They believe these areas are interpretive and invite claims to challenge company statements. Use and misuse of social media is the third major area as companies use it to advertise and engage customers. These activities often bring unexpected interpretations and public scrutiny and highlight offensive topics introduced by employees.

Class Action Subjects Posing the Biggest Risk
PERCENT OF COMPANIES



Note: Chart does not add up to 100%. Excludes other responses under 3%.
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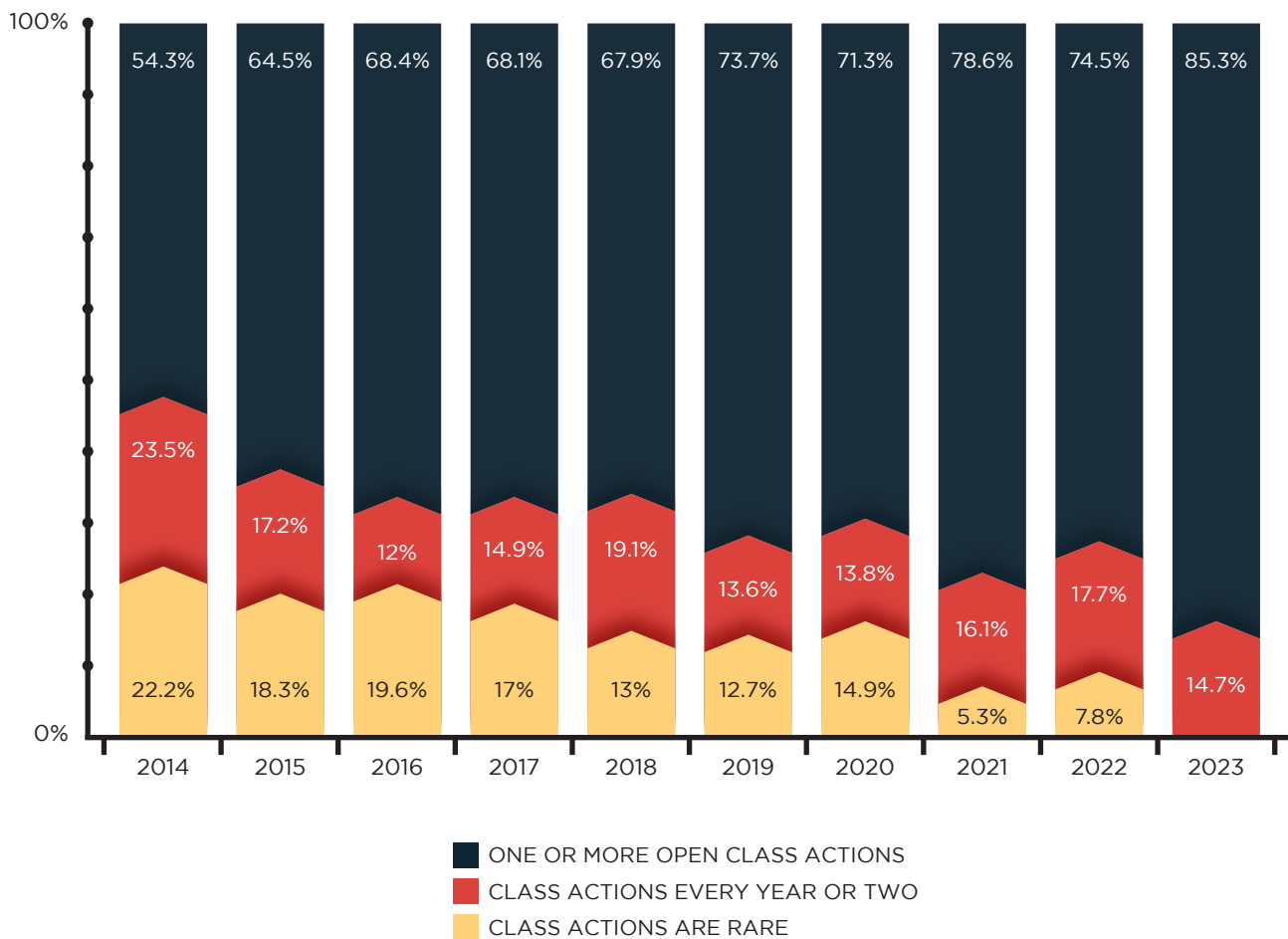
CASELOAD, LAW FIRMS, AND IN-HOUSE RESOURCES

Almost All Companies Facing Class Actions Have Faced Them Before

Virtually every company included as part of this survey faces claims on a regular basis. Among companies with class actions, they are seeing more class actions over time (see the next page for more detail). This is the first time in the history of this survey that no companies reported class actions that are “rare.”

Class Action Experience

PERCENT OF COMPANIES FACING CLASS ACTIONS



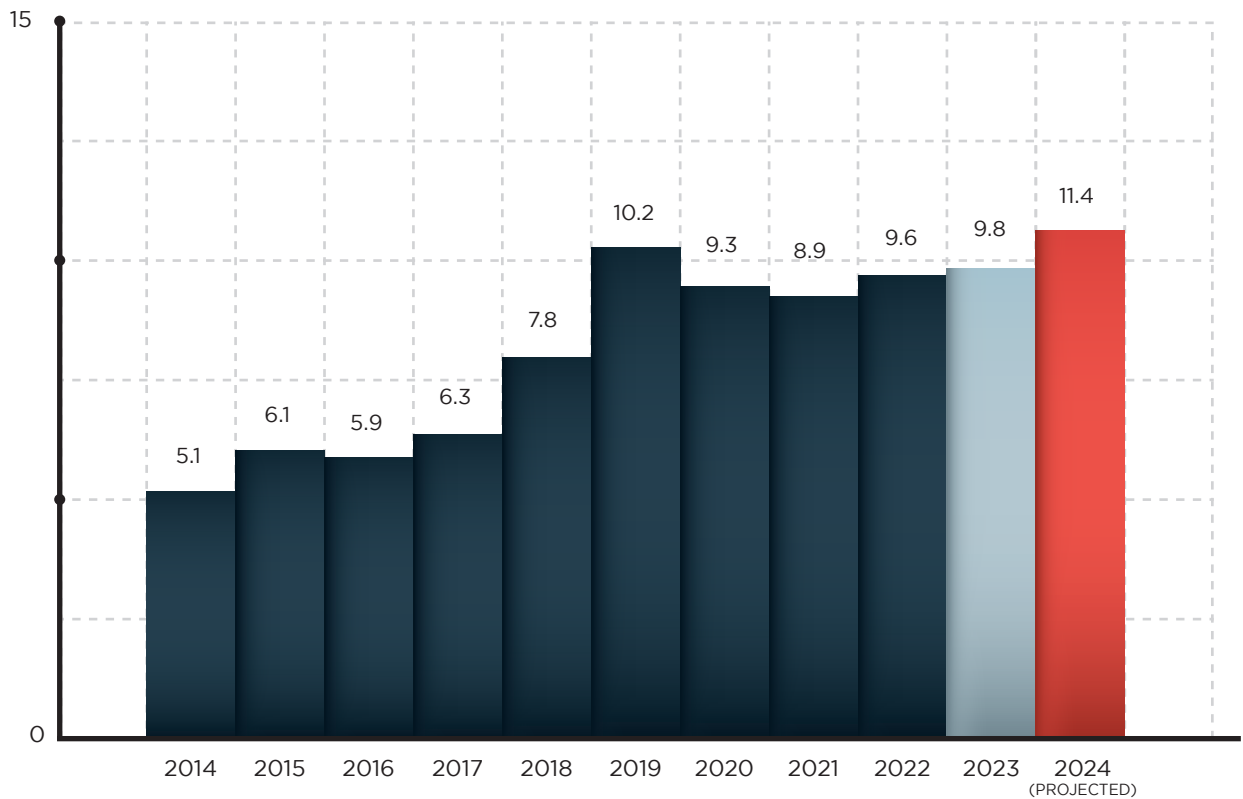
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Number of Class Actions at Second-Highest Year on Record

Companies faced similar numbers of class actions in 2022 and 2023. Companies expect to add one to two class actions in 2024, rivaling 2019's record of 10.2 matters per company.

Current Class Actions

AVERAGE NUMBER OF MATTERS PER COMPANY



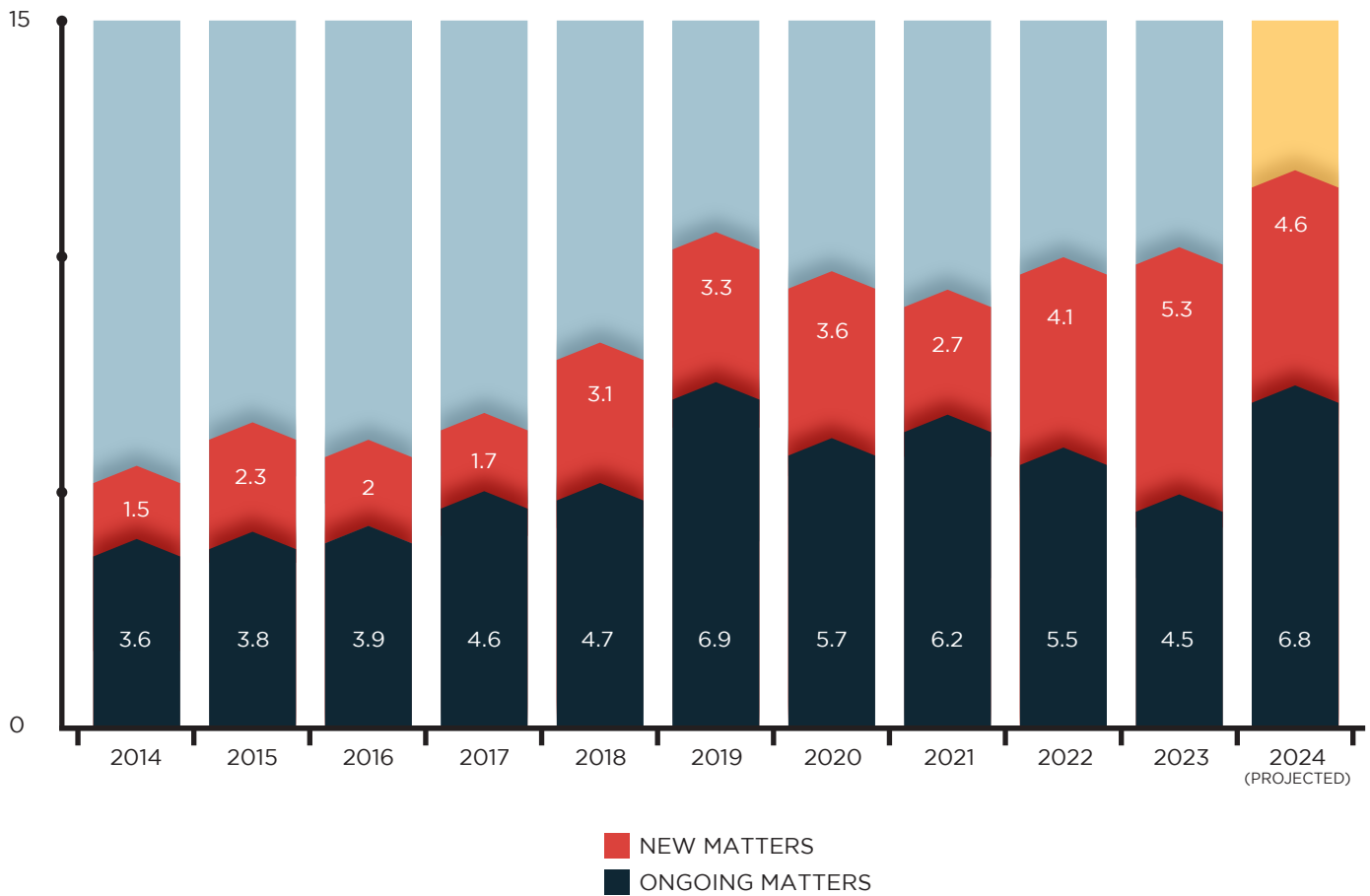
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2024 to Bring a New Peak in Class Actions Per Company

In part to address this growing caseload, companies have added substantial in-house attorney headcount (see page 23).

Current Class Actions

AVERAGE NUMBER OF MATTERS PER COMPANY

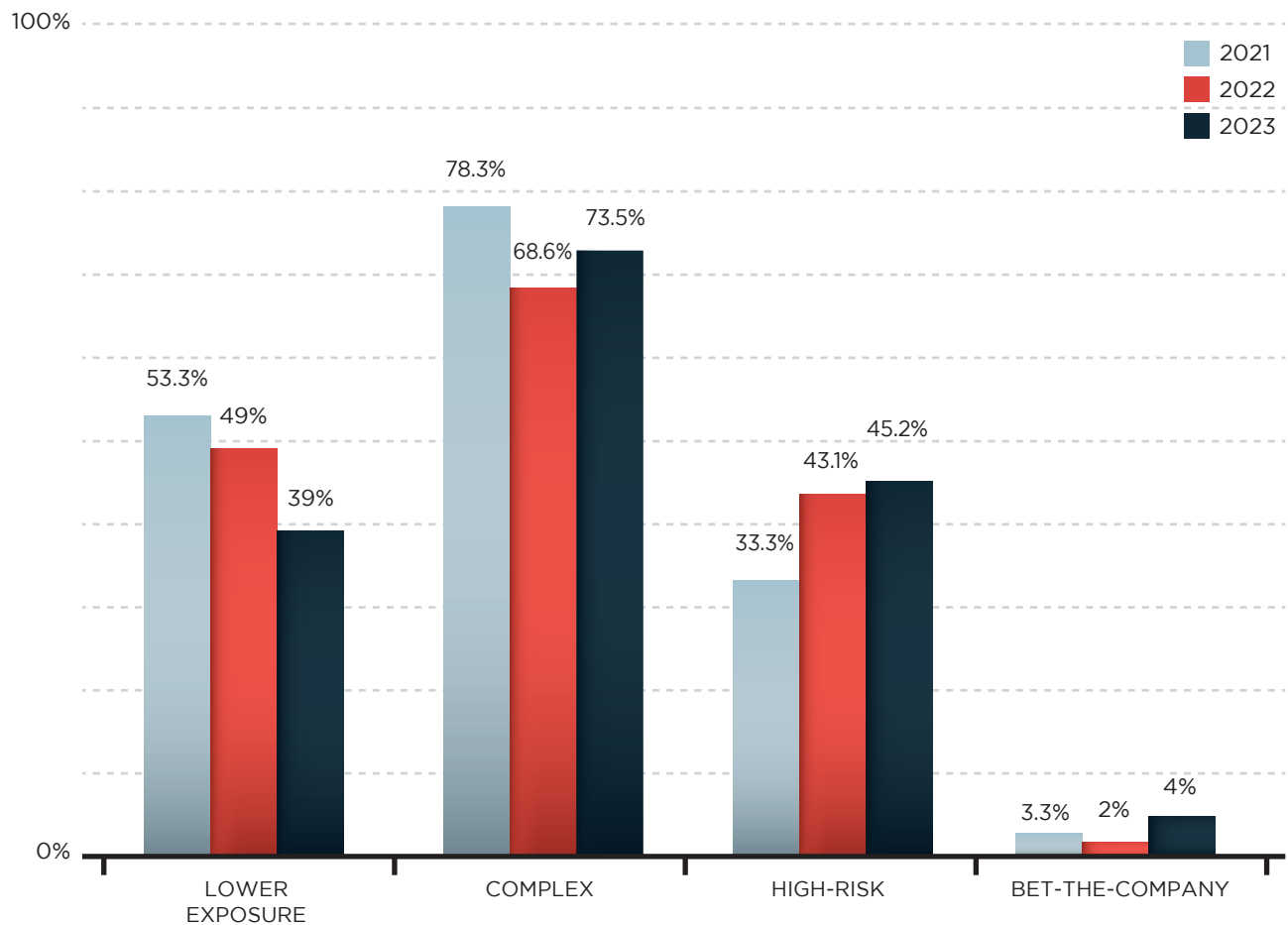


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Companies Facing High-Risk and Complex Matters Jump

The percentage of companies facing high-risk matters and complex matters continues to grow. These companies see an increase in employee claims, consumer fraud, data privacy, and discrimination. They all bring financial, reputational, and operational risks. Lower exposure matters declined as the more complex and high-risk matters increased. Bet-the-company matters increased but remain a small portion of the class action portfolio.

Class Actions Breakdown by Risk Level
PERCENT OF COMPANIES MANAGING CLASS ACTIONS

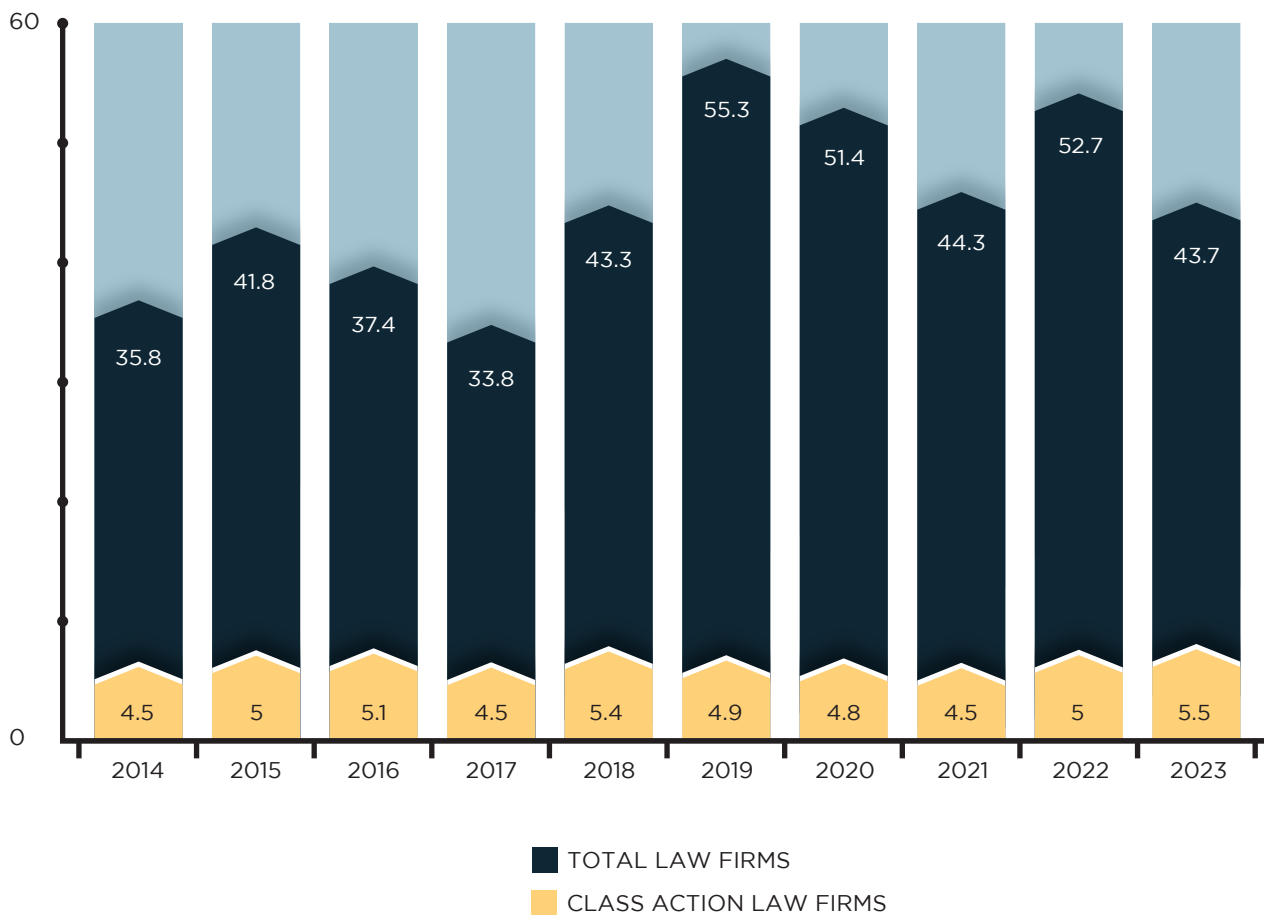


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Class Action Law Firm Panels Edge Up

More companies than not added a law firm to their class action panel, increasing the range to an average number of law firms used to 5.5. As discussed on page 37, relying on trusted outside counsel is the best tool to control costs. The total number of law firms used declined to 2021 levels.

Law Firms Used Overall and for Class Actions
NUMBER OF FIRMS

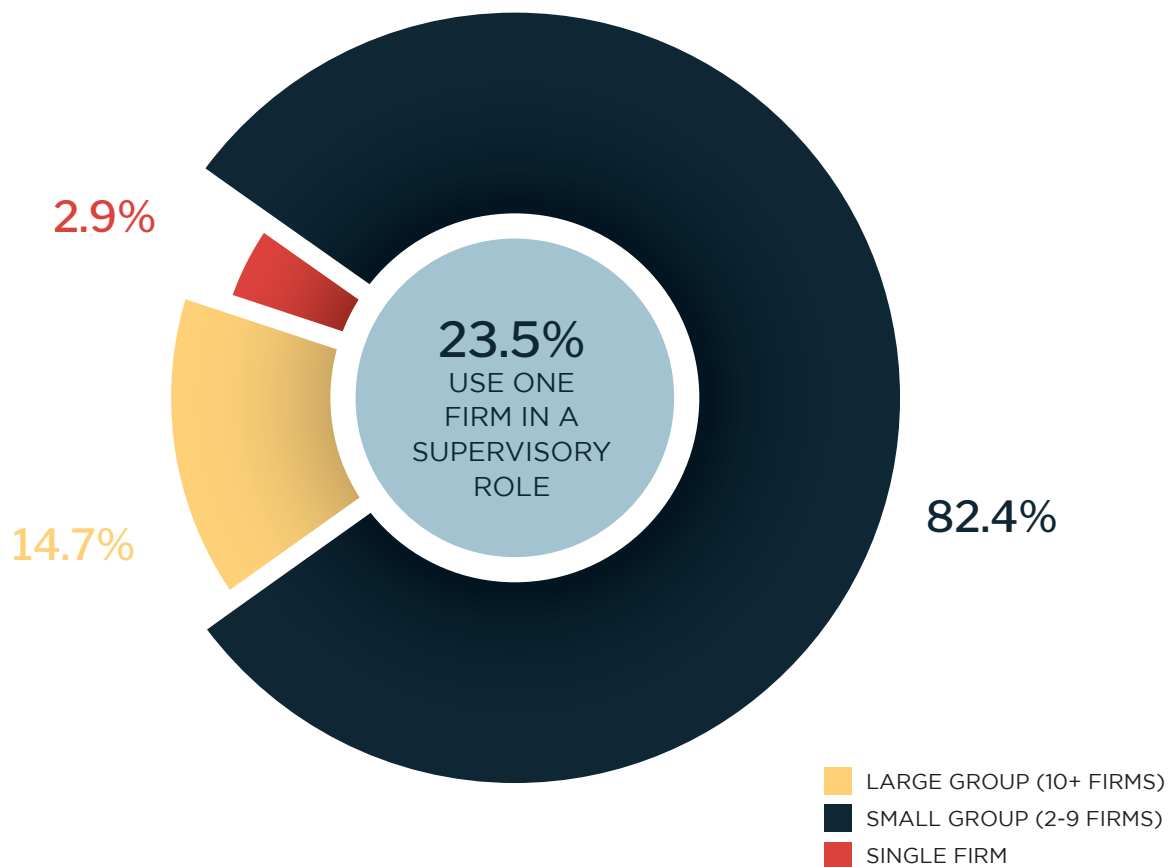


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Companies Rely on a Small Group of Law Firms to Manage Class Actions

Eight of 10 companies rely on a small group of law firms to defend class actions. The benefits include hoping to build and maintain trusted relationships, improved dialogue at matter inception, more understanding of client goals, and improved cost control. Only a small segment of companies use a large group of law firms, even as the caseload grows, because the management burden outweighs other benefits. About 24% of companies use a single law firm in a supervisory role, down from 30% last year, as companies rely more on individual firms.

Role of Firms in Class Action Work
PERCENT OF COMPANIES

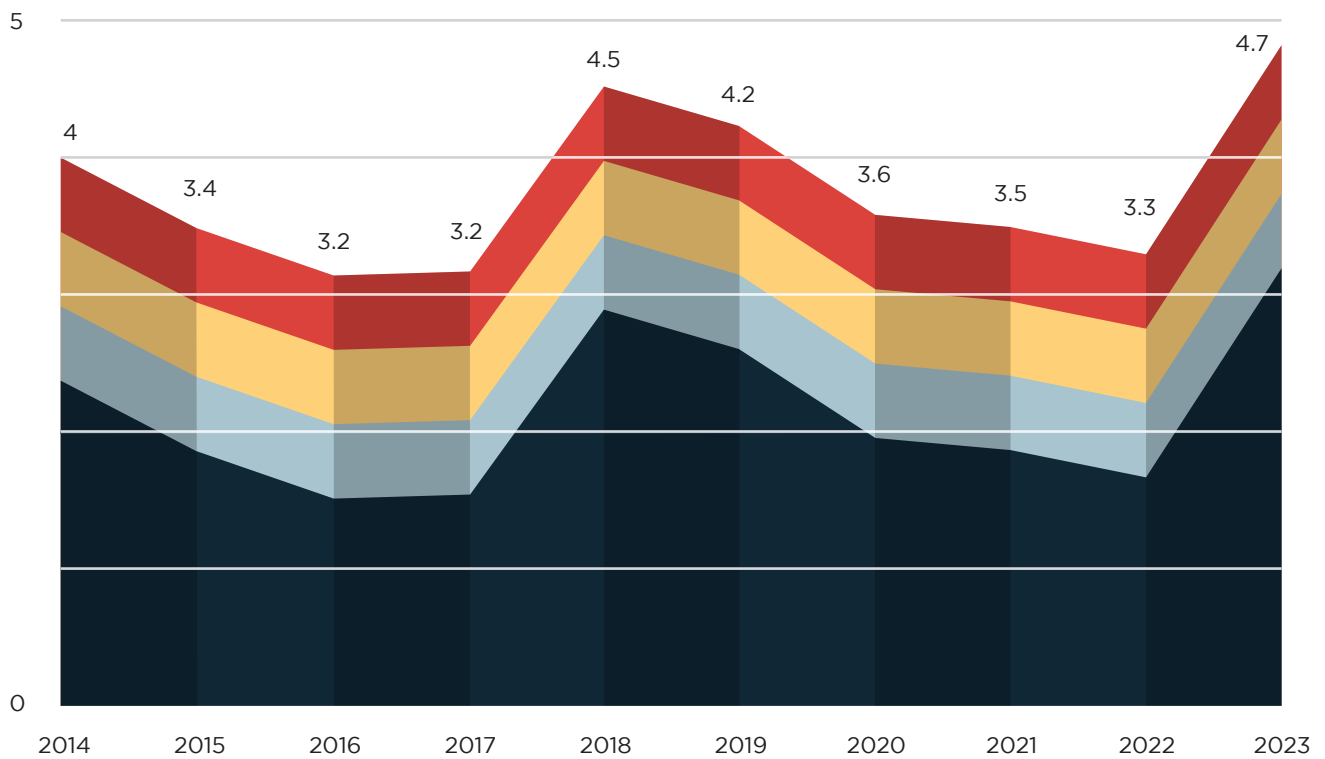


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Companies Add More In-House Attorneys to Manage Class Action Defense — to Record Level

Companies added more than one full-time equivalent in-house attorney to manage their class action defense. Companies are trying to manage better an increased caseload (see page 18).

In-House Attorneys Dedicated to Class Actions
AVERAGE NUMBER OF LAWYERS

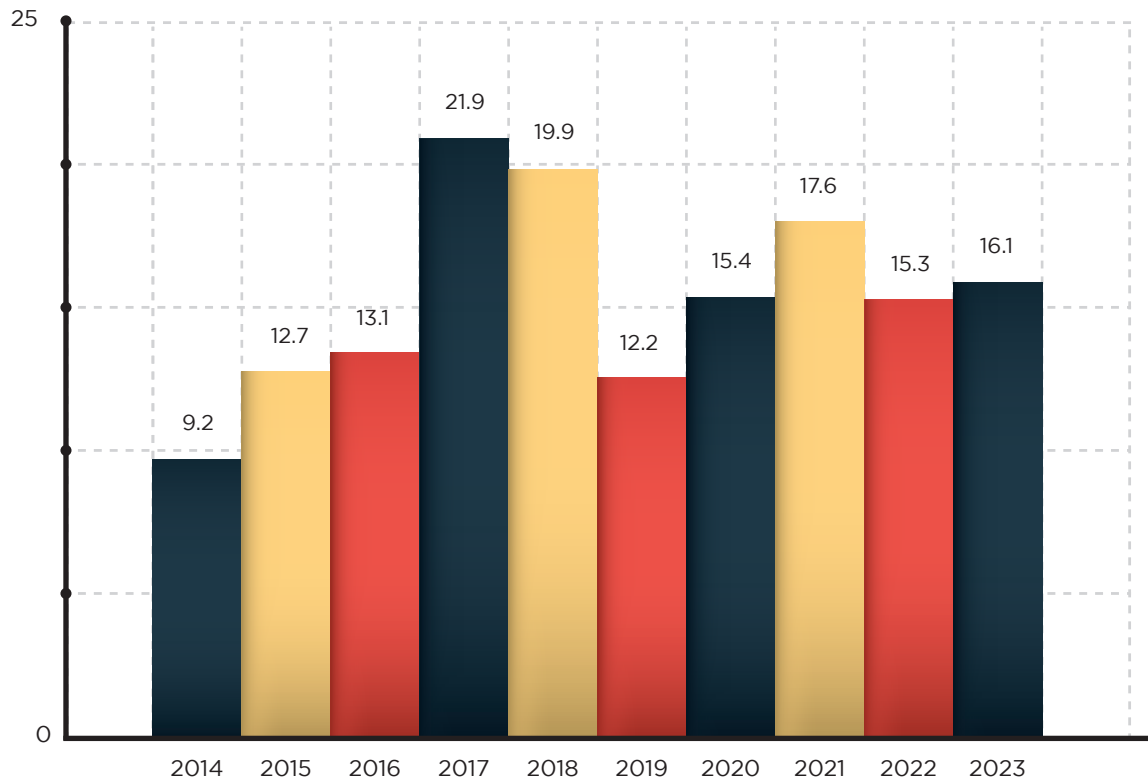


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In-House Attorneys Increase Time Dedicated to Defending Class Actions

In-house attorneys who work on class actions are spending 6% more time on class actions than last year – this contrasts with the drop in dedicated time in 2022. This translates to 188 hours per year per in-house attorney. The rise is a result of an increased caseload and greater complexity.

Aggregate In-House Attorney Time Spent on Class Actions
HOURS PER WEEK

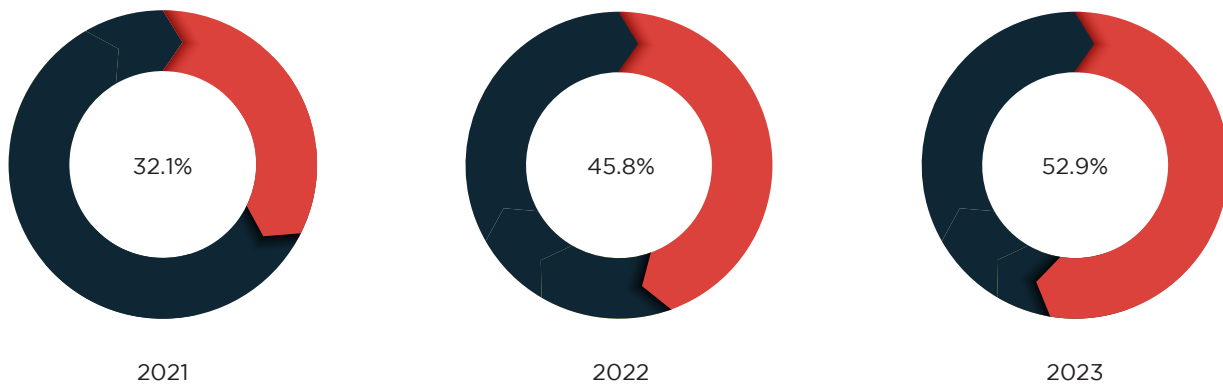


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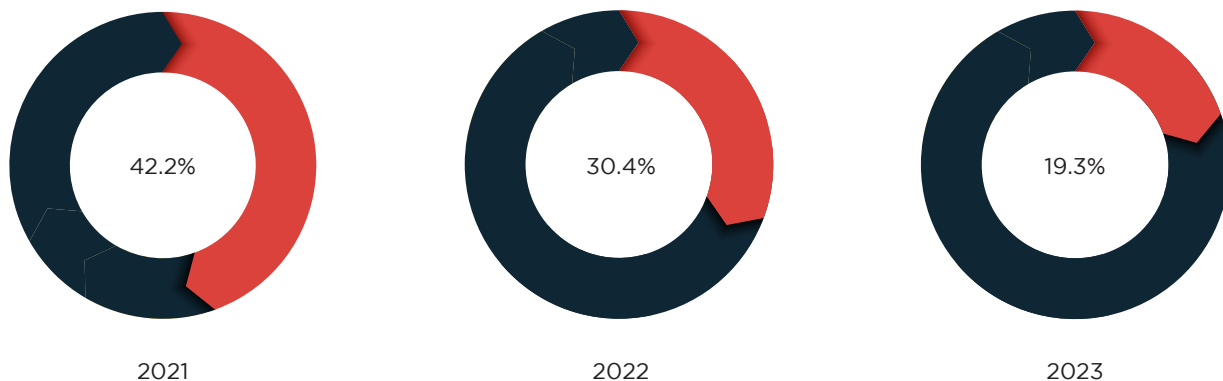
More Companies Use Insurance, With Big Drop in Coverage

The percentage of companies with a portion of their class action defense costs covered by insurance increased to 52.9% from 45.8% last year. Companies pay high coinsurance and are paying more out of pocket as a result.

Companies With Defense Costs Covered by Insurance
PERCENT OF COMPANIES



Defense Costs Covered by Insurance
PERCENT OF CLASS ACTION DEFENSE COSTS



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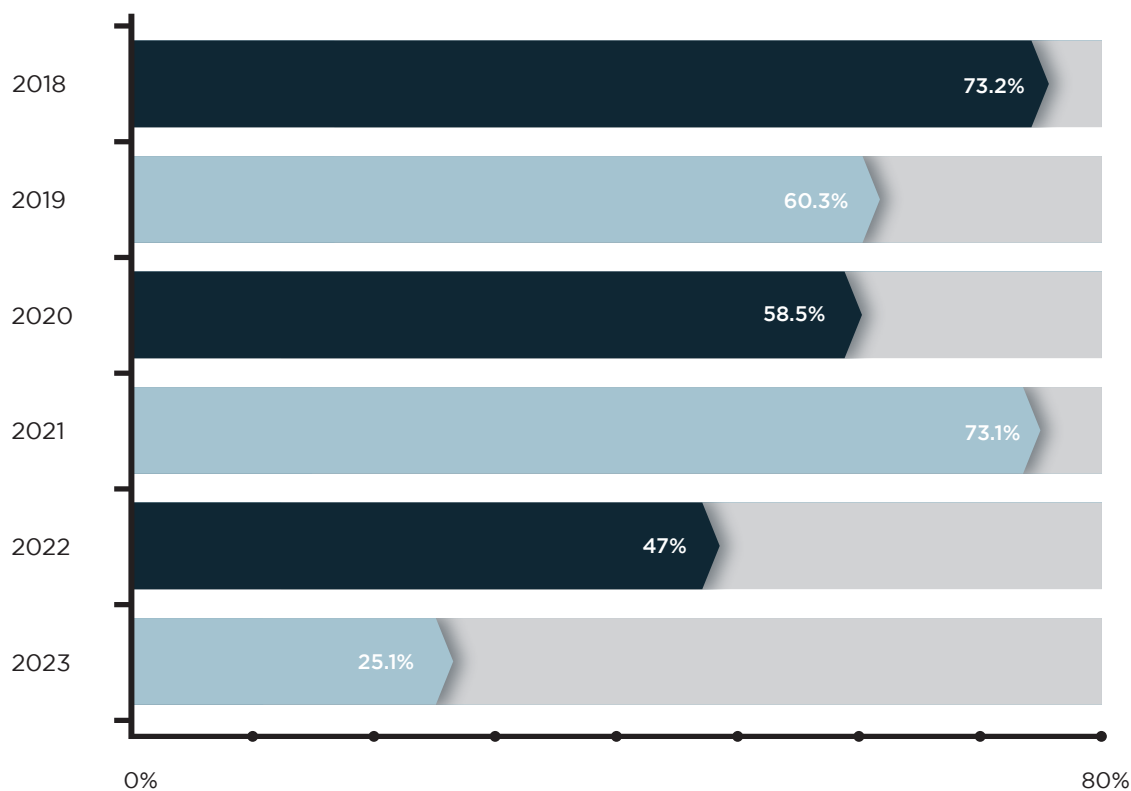
RESOLUTION OF CLASS ACTIONS

Class Action Settlements Plunge to Lowest Level in Six Years

The percentage of settlements continues the path down to nearly half. Companies report little interest from plaintiffs, complex claims, and a time-consuming workload as the main reasons.

Class Actions Settled

AVERAGE PERCENT OF CLASS ACTIONS

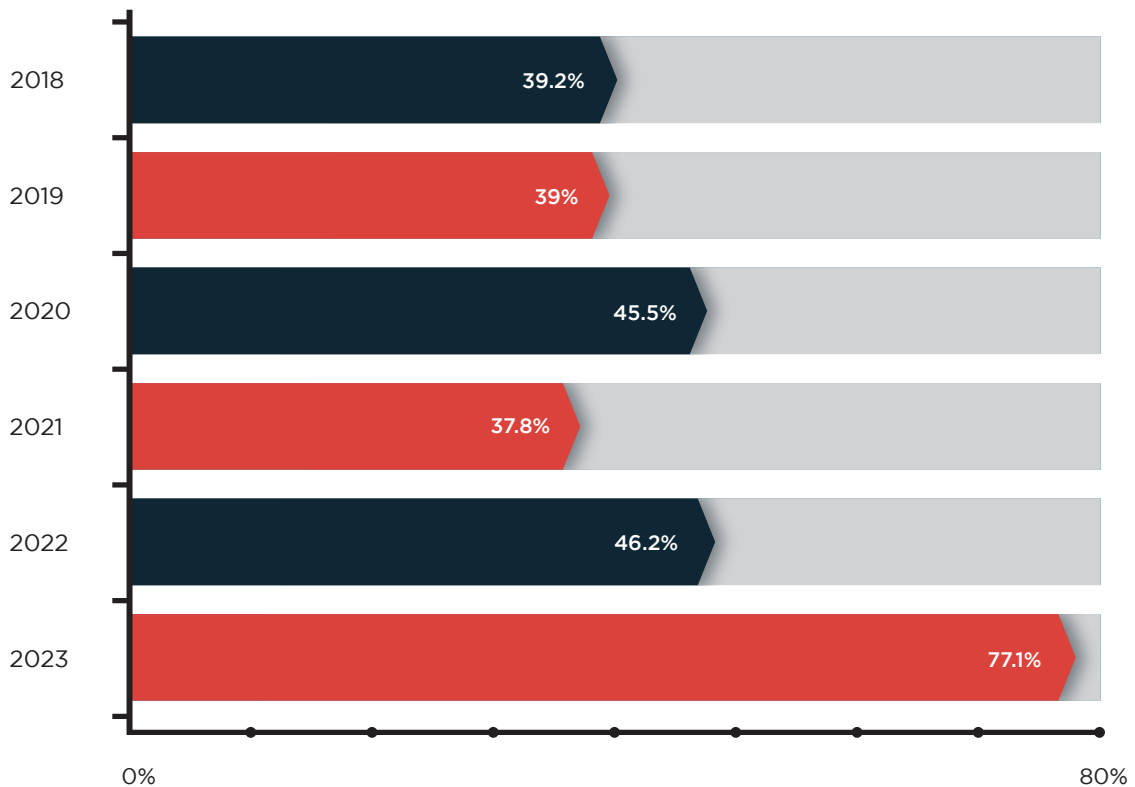


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Individual Settlements Surge

The few settlements reached in 2023 are dominated by individual settlements – a dramatic jump from prior years. Corporate counsel point to confidentiality and avoiding precedent as major benefits and motivators.

Individual Settlements
PERCENT OF SETTLED CASES



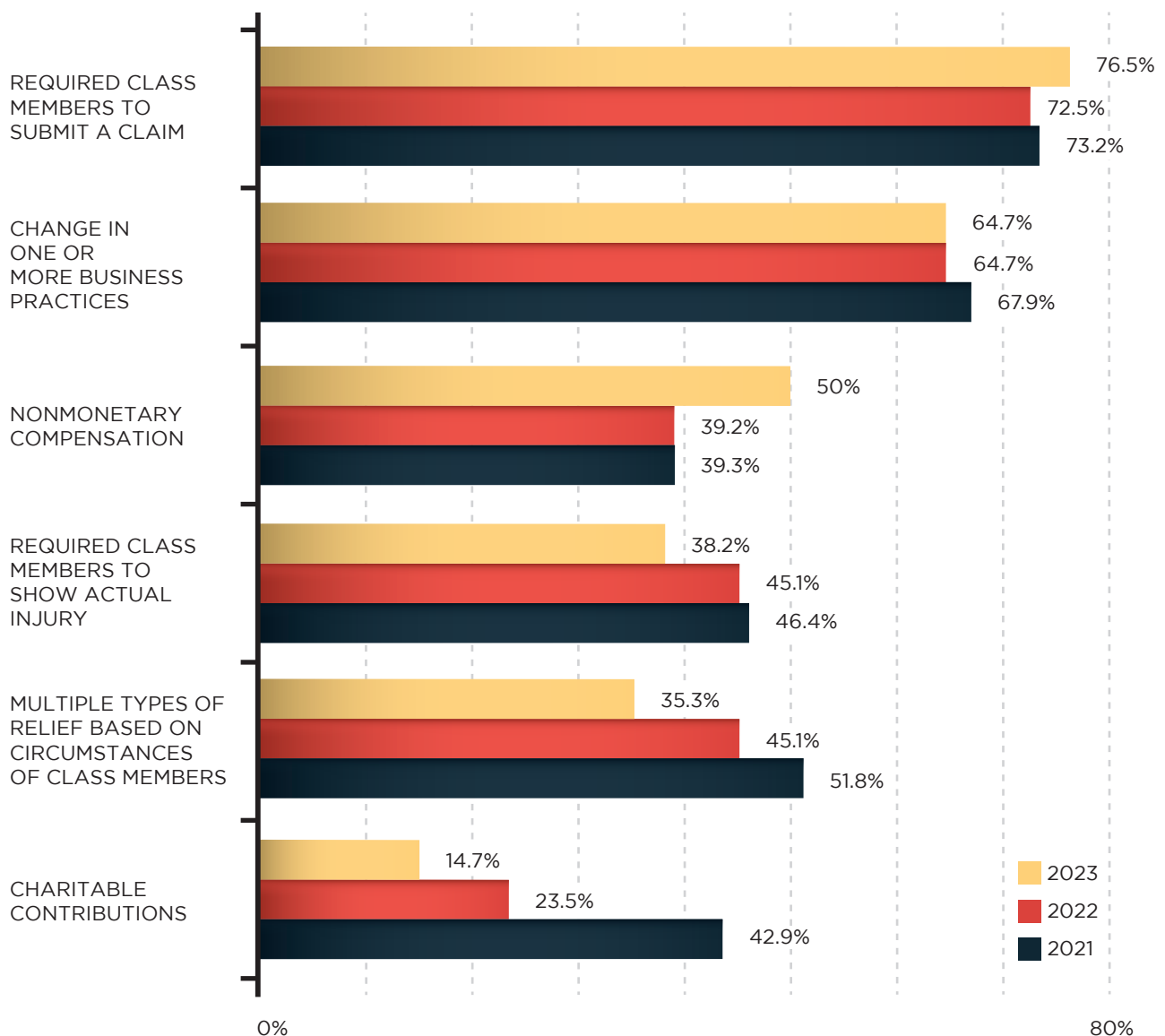
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Companies Use Narrower Range of Terms in Settlements

Companies continue to employ a variety of strategies to contain the overall cost and precedential significance of class action settlements. Requiring individual class members to submit individual claims leads the pack. Companies are receding markedly from agreeing to charitable contributions (cy pres) as part of class action settlements.

Involved in a Settlement with the Following Conditions

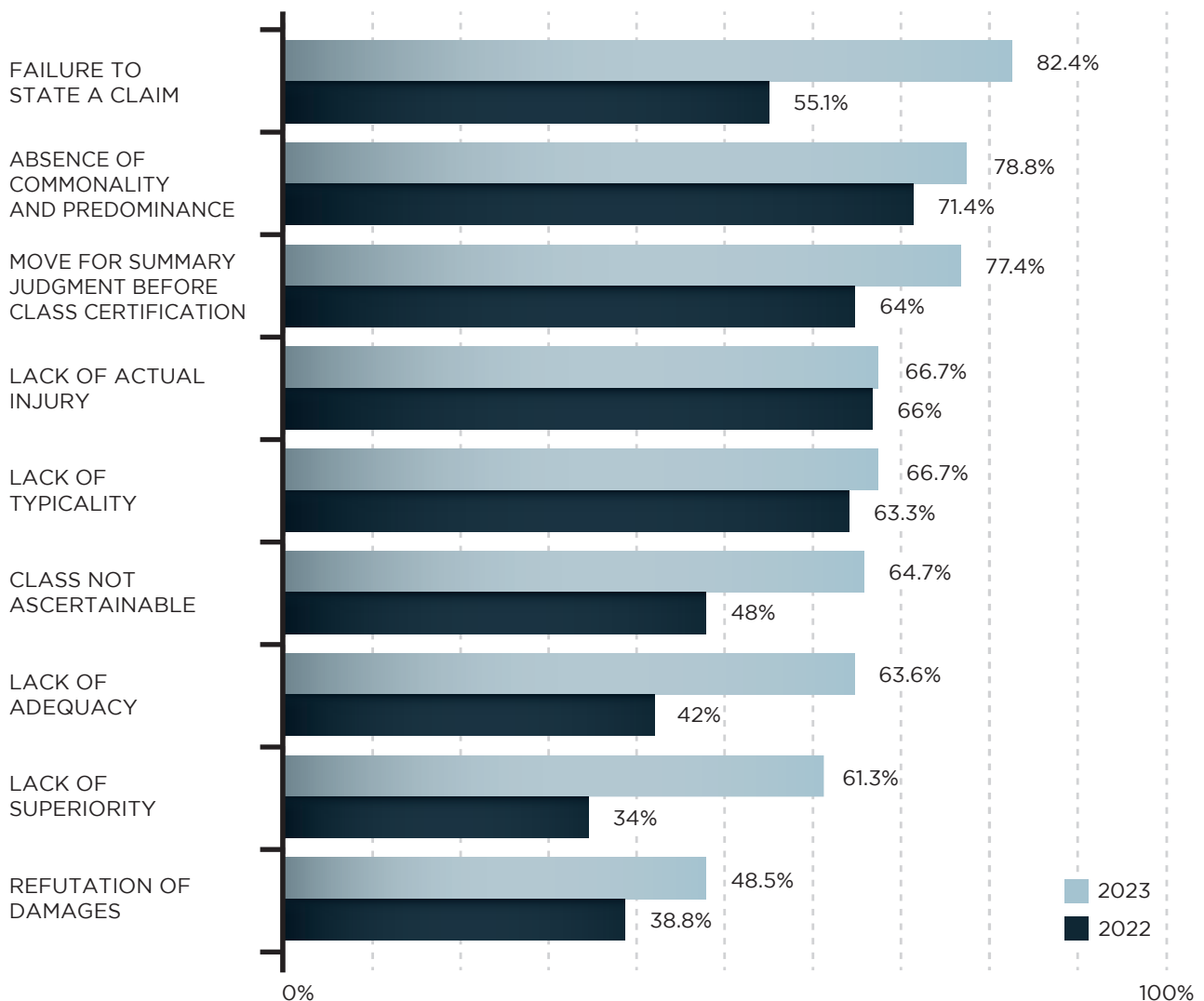
PERCENT OF COMPANIES



Failure to State a Claim Surges to Top of Class Action Defense

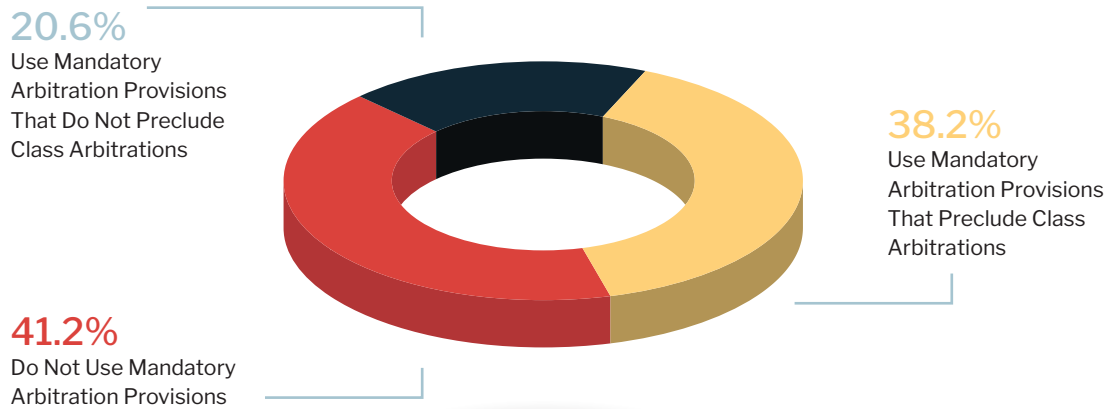
Four defense strategies stand out as being most effective: failure to state a claim surges to the No. 1 spot, which fits with the view of in-house counsel that they are facing frivolous claims; absence of commonality grows; move for summary judgment before class certification jumps; adequacy and superiority surge, which shows success at the class certification stage. All defenses increased from last year. This makes sense given the low class settlement number, because wins are an effective way to manage a company's class action docket.

Successful Class Action Defenses PERCENT OF COMPANIES



Fewer Companies Use Mandatory Arbitration Provisions

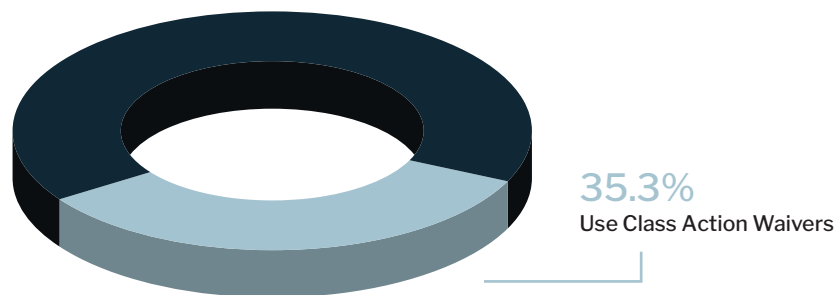
Of the companies using arbitration provisions, many more preclude class arbitration than those that don't. About 21% of companies do not preclude class arbitration. Forty-one percent of companies do not use mandatory arbitration provisions, up from 29.4% last year. Companies report the reduction is due to regulatory scrutiny and public pressure.



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Class Action Waivers a Tool for 35.3% of Companies

Just over three out of every 10 companies use class action waivers in their contracts. While a strong risk management tool, companies report that perceived regulatory resistance and concerns about consumer reaction drive them to omit class action waivers.



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IN THEIR OWN WORDS:

CORPORATE COUNSEL ON WHY THEY USE CLASS ACTION WAIVERS

Do you use class action waivers in any of your company's contracts? Why or why not?



Yes, in the employment of all new hires, which includes new employees from acquisitions.

*– General Counsel
Large Manufacturer*

Yes, our thought process has changed over the years, mostly because of California. We thought we would get better results and prevent the runaway verdicts.

*– Director of Litigation
Fortune 500 Retailer*

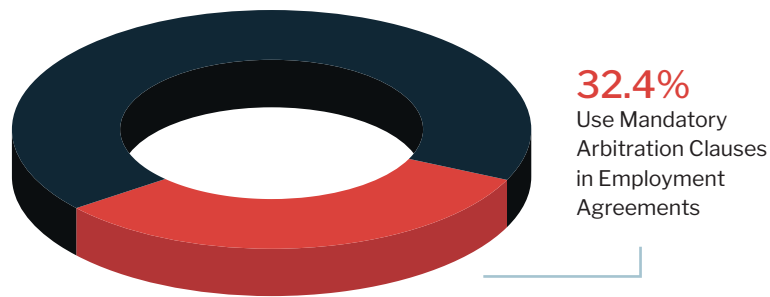
Yes, one of our affiliates is starting to use them to hopefully discourage future class actions.

*– Senior Corporate Litigation Counsel
Multinational Food Conglomerate*



Only One-Third of Companies Use Mandatory Arbitration Clauses in Employment Agreements

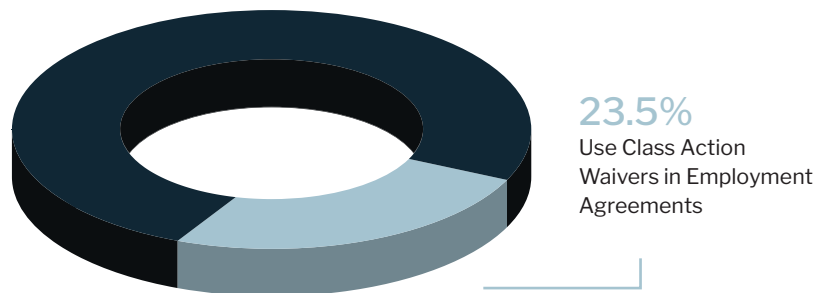
Only 32.4% of companies use mandatory arbitration clauses in employment agreements. They point to the following as the reasons for not doing so: investor scrutiny, public pressure, and concern about covering up bad actors.



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Few Companies Use Class Action Waivers in Employment Agreements

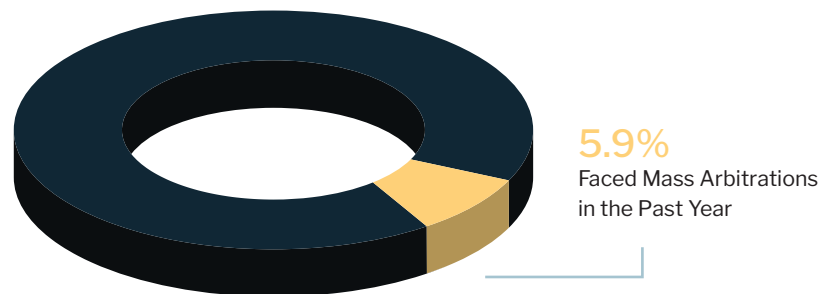
About 24% of companies use class action waivers in employment agreements. The reasons they are not used include regulatory scrutiny, public pressure, and workforce resistance.



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Mass Arbitration Remains Limited

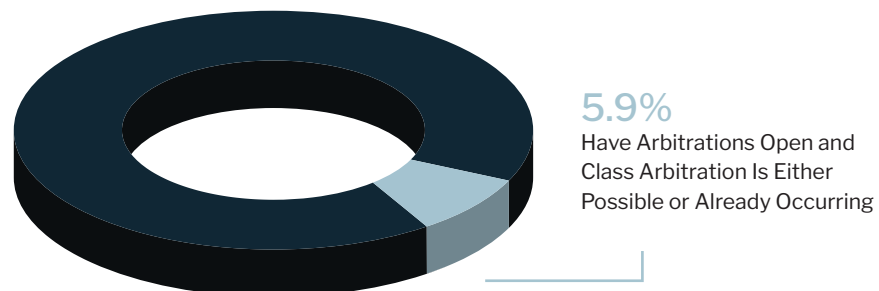
Few companies have faced mass arbitration in the last 12 months, suggesting this is not yet a trend. This year's 5.9% is a modest increase over last year's report of 3.9%. Mass arbitration occurs when a company faces a series of hundreds or even thousands of nearly identical, single-claimant arbitrations. A coordinating plaintiff's counsel usually represents each of these claimants, alone, or with a consortium of local counsel. Where this has been done on a large scale, the company defending these arbitrations typically has an arbitration agreement that contains a class action waiver and some provision that it will pay the costs of arbitration. By filing en masse, the claimants' law firm is able to exert pressure on the company to resolve the claims by pointing to the arbitration agreement's provision that the company pays the costs of arbitration, including filing fees.



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Few Companies Face Class Arbitration

Class arbitration remains a limited phenomenon.



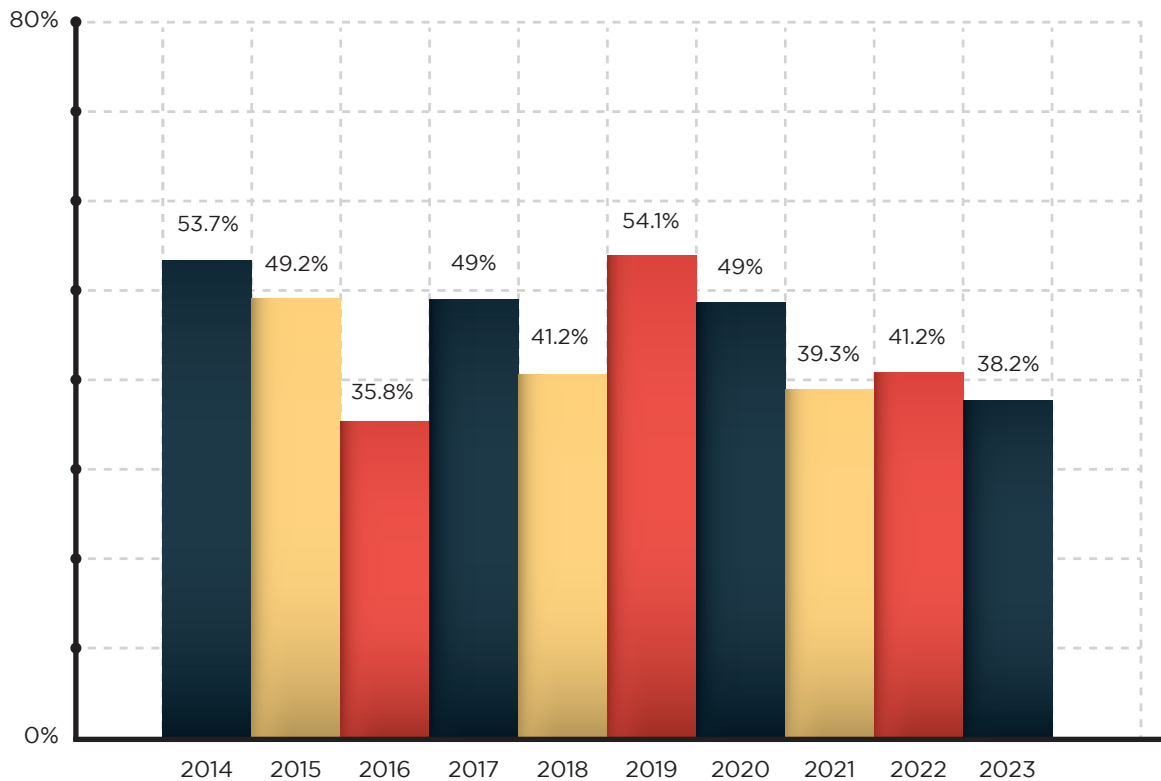
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COST CONTROL AND USE OF AFAs

Lower AFA Usage Continues

Only 38.2% of companies with class actions are using alternative fee arrangements. AFA usage remains at historically lower levels. Companies report low usage due to the following: turnover between law firms and in-house counsel prevents the deep understanding needed for an alternative fee arrangement, peak workload doesn't allow enough time to map out a strategy, and more law firm resistance due to demand for legal services exceeding supply.

Alternative Fee Arrangement Use in Class Actions
PERCENT OF COMPANIES

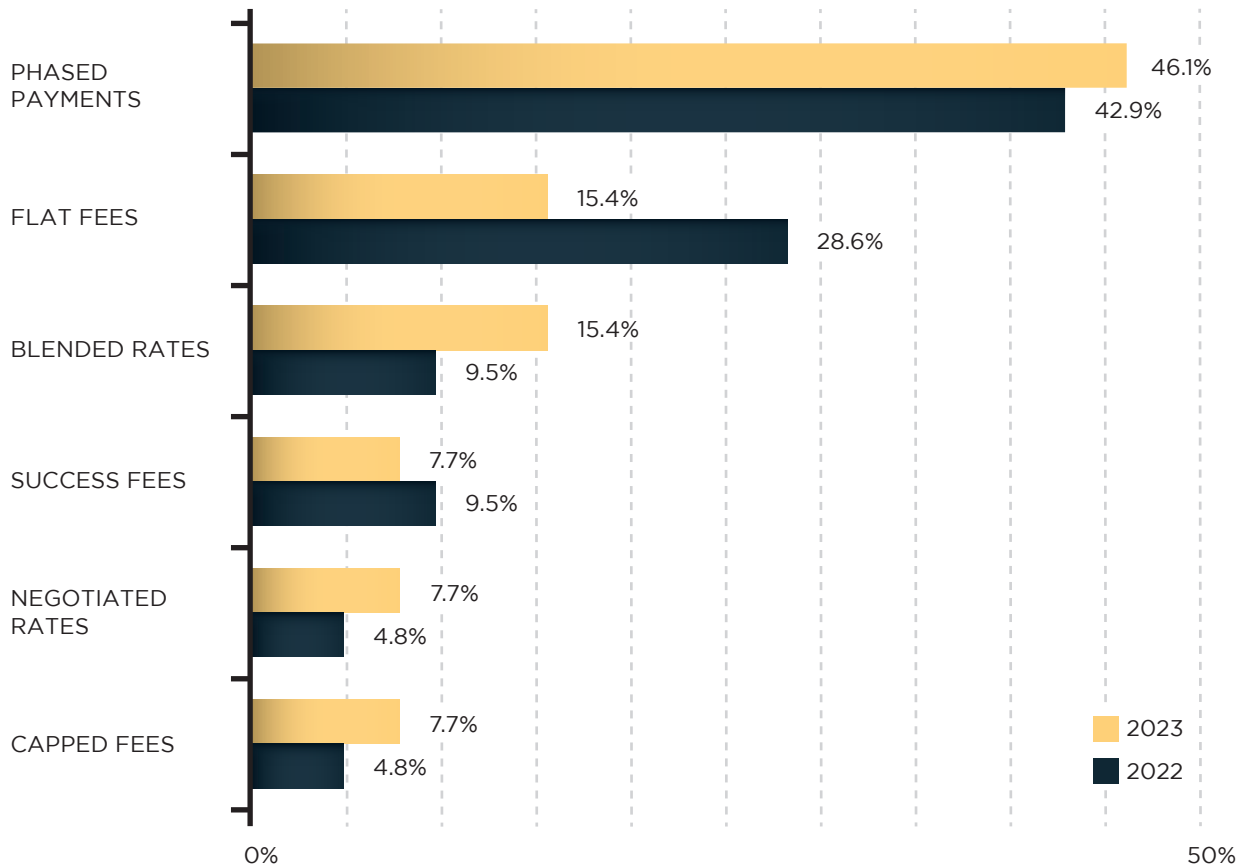


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Phased Fixed Fee Reported as Most Successful AFA

Phased payments remain at the top for the most successful alternative fee arrangement for class actions. They are successful three times more often than any other approach. Phased fee arrangements are fixed fees for portions of the matters where law firms propose a new fixed fee for each new phase. This offers predictability and more focused management of discrete components of class action work. This approach also helps everyone learn from experience and set more realistic and reliable fees. Use of flat fees dropped substantially. Blended rates jumped, which may reflect preferences of insurance carriers.

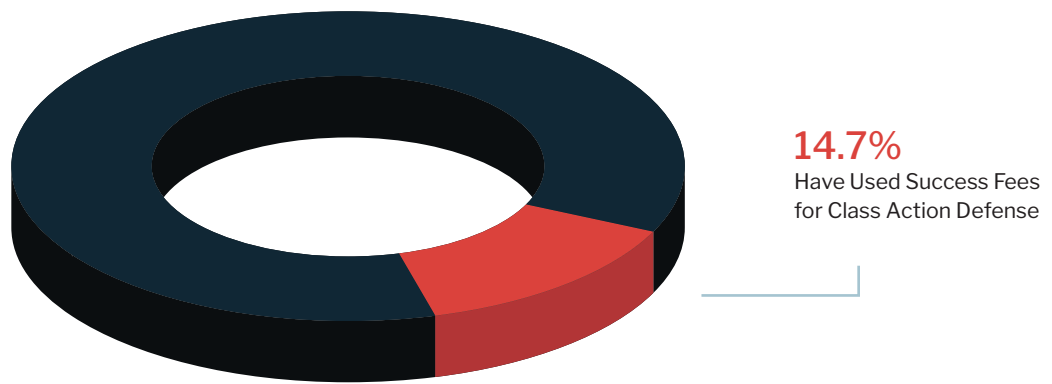
Success of Alternative Fee Arrangement Types in Class Actions
PERCENT OF COMPANIES



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Success Fees in Limited Use

About 15% of companies have used success fees for class action defense. The remaining 85% don't use success fees due to in-house counsel not having time to negotiate, little interest on the part of outside counsel, and difficulty in defining metrics to define success.

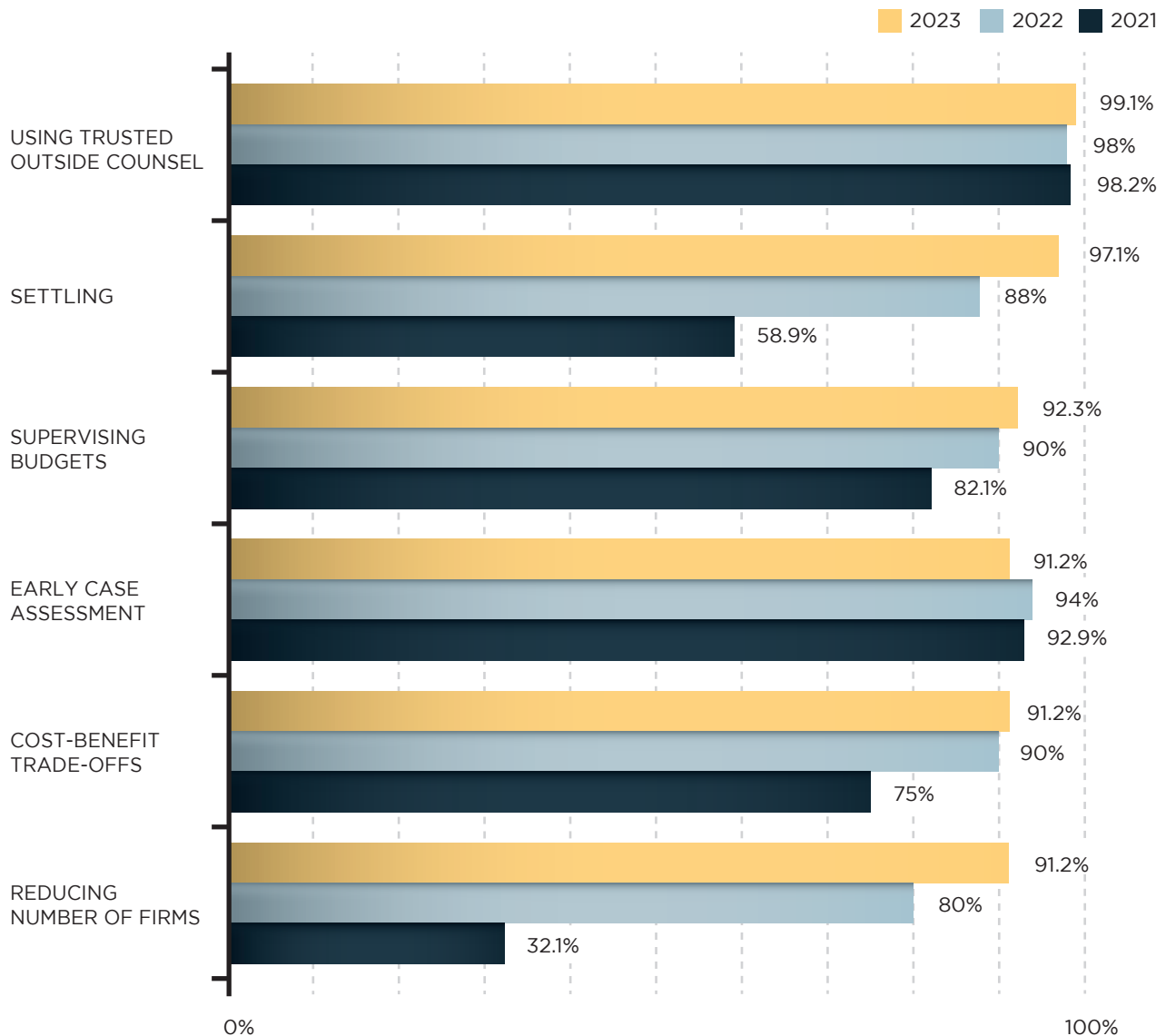


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Using Trusted Counsel Rated the Most Effective Cost Control Tool

Using trusted counsel remains the most effective tool to reduce and control costs. Trusted counsel will make the right decisions at the right time. Settling moved several spots up the list of cost reduction practices, even as settlements remain historically low (see page 26). Early case assessment, cost-benefit trade-offs, and reducing the number of firms tied as the fourth most effective ways for companies to control or reduce costs.

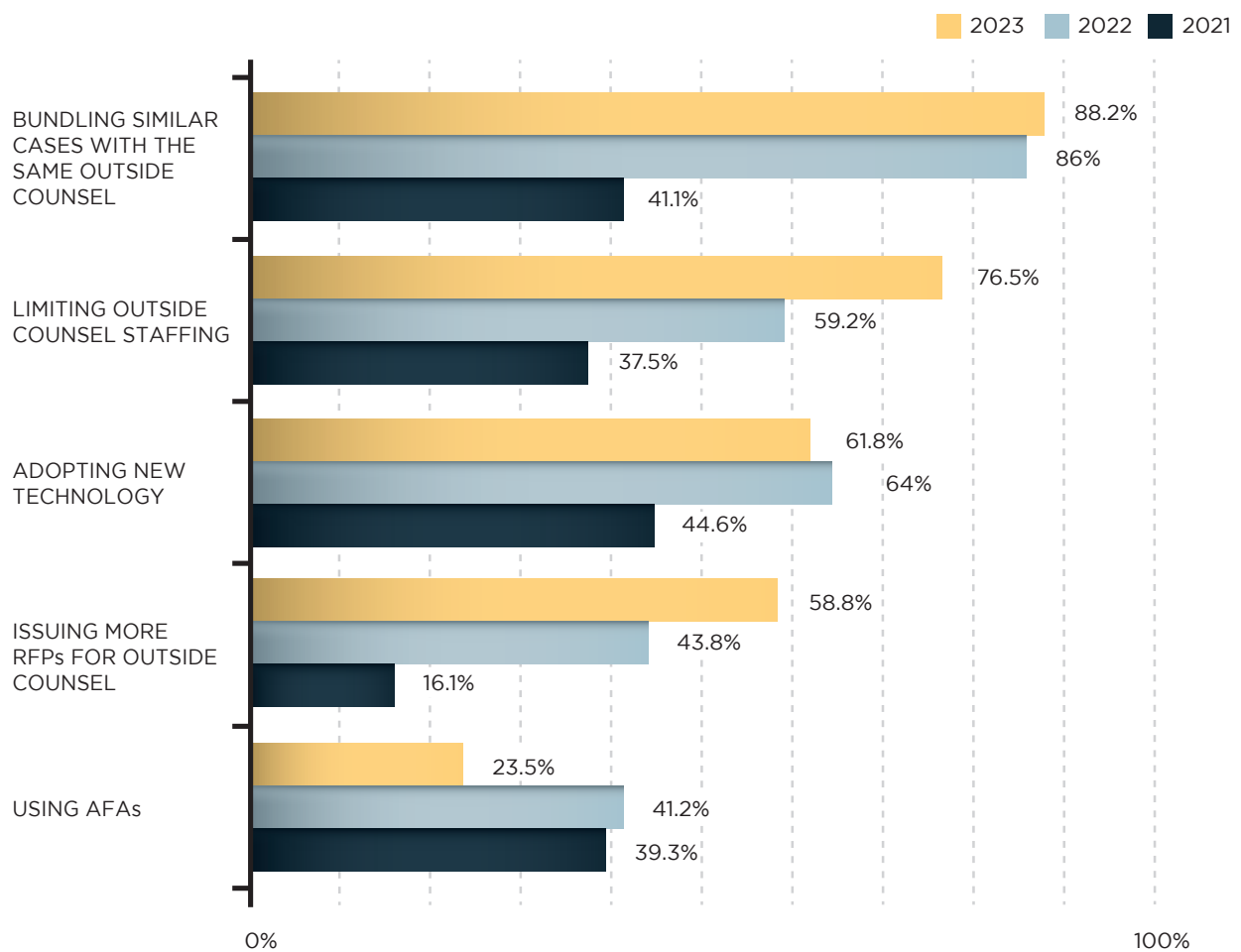
Cost Reduction Policies and Practices
PERCENT OF COMPANIES



Limiting Outside Counsel Staffing Sees the Most Improved Rating in Cost Control Effectiveness

Bundling similar cases with the same outside counsel edges up to the seventh most effective way to control or reduce costs. Limiting outside counsel staffing increased the most in cost reduction policies, giving companies more control over costs. This includes requiring approval to add timekeepers or restricting the number of associates or partners on a matter. Issuing more requests for proposals surges as a cost control tool, cutting against the broader trend of companies avoiding RFPs outside of class actions. Alternative fee arrangements drop as a cost control tool as usage remains low (see page 34).

Cost Reduction Policies and Practices (continued)
PERCENT OF COMPANIES

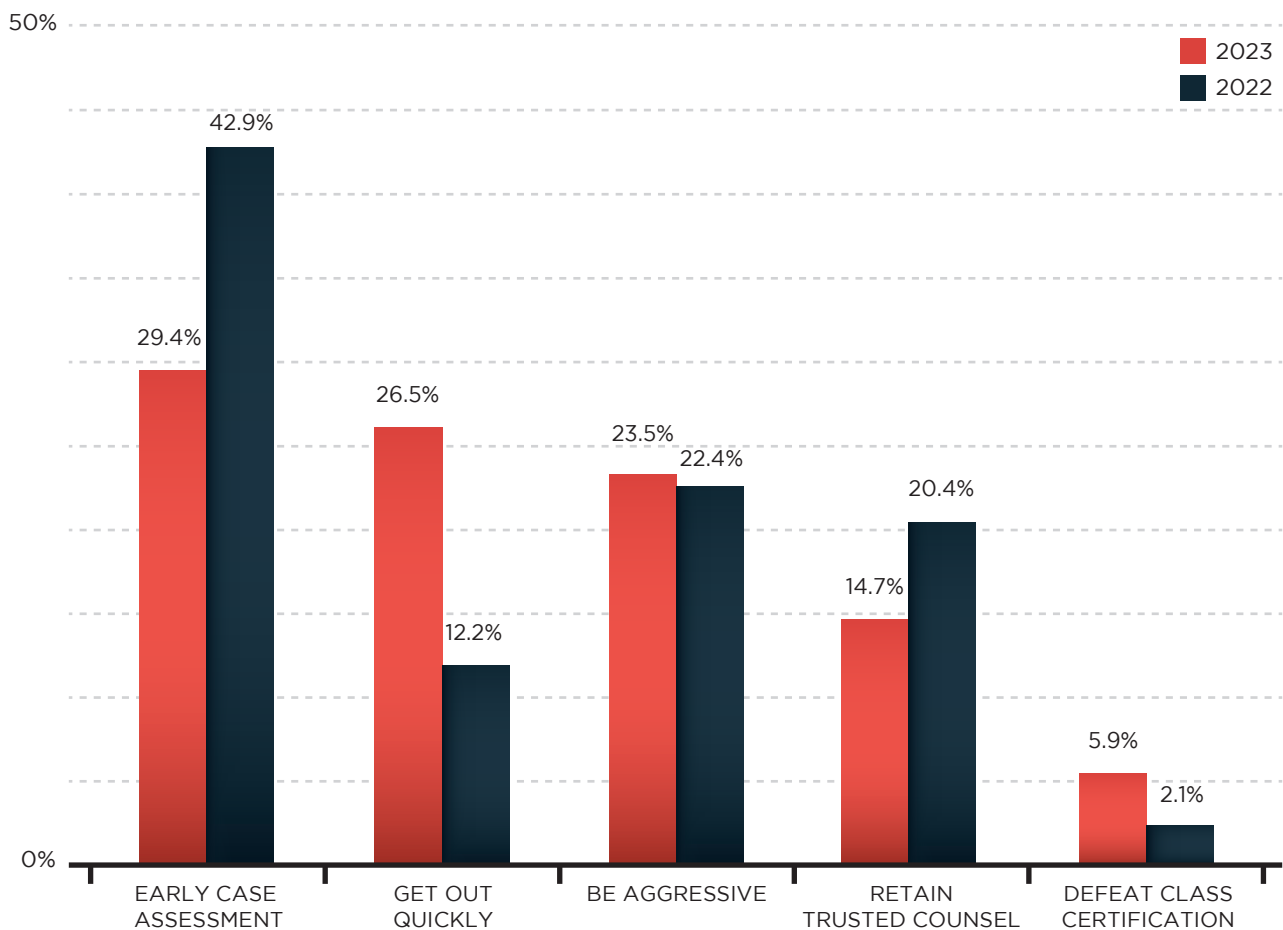


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More Companies Look to Early Exits to Manage Class Actions

Getting out quickly more than doubles as the current approach to managing class actions. Early case assessment drops as companies look for the exits instead of a risk assessment. Aggressive approaches — where companies throw everything they can at plaintiffs — rivals the top two approaches discussed above.

Approach to Managing Existing Class Actions
PERCENT OF COMPANIES



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IN THEIR OWN WORDS:

CORPORATE COUNSEL ON THEIR APPROACH TO MANAGING EXISTING CLASS ACTIONS

How would you describe your approach to managing your existing docket of class actions?



An early case assessment is critical. We look for every opportunity to settle or to close a case down quickly.

– Assistant General Counsel
Large Health Care Company

We assess these cases early and try to settle them as quickly as we can. We rarely fight unless we believe it's a totally baseless claim that we know we can win.

– Vice President and Associate General Counsel
Fortune 500 Retail Company

We are very involved from the start. We require a very early case assessment and try not to litigate. We try to settle as early as we can.

– Chief Legal Officer
Prominent Food Services Company

We try to manage them as efficiently as possible and not get caught up in the e-discovery rat race. We always look for strategic opportunities to exit the case.

– Expert Counsel, Global Litigation
Multinational Manufacturing Company

We aggressively demonstrate to plaintiffs' counsel that it will be a long, uphill battle for them, and it would be an easier path for all parties to take a quick exit with a low number.

– General Counsel
Large Manufacturer

We use the same firm over and over because they know us and our cases very well. We move to summary judgment and use those orders over and over again.

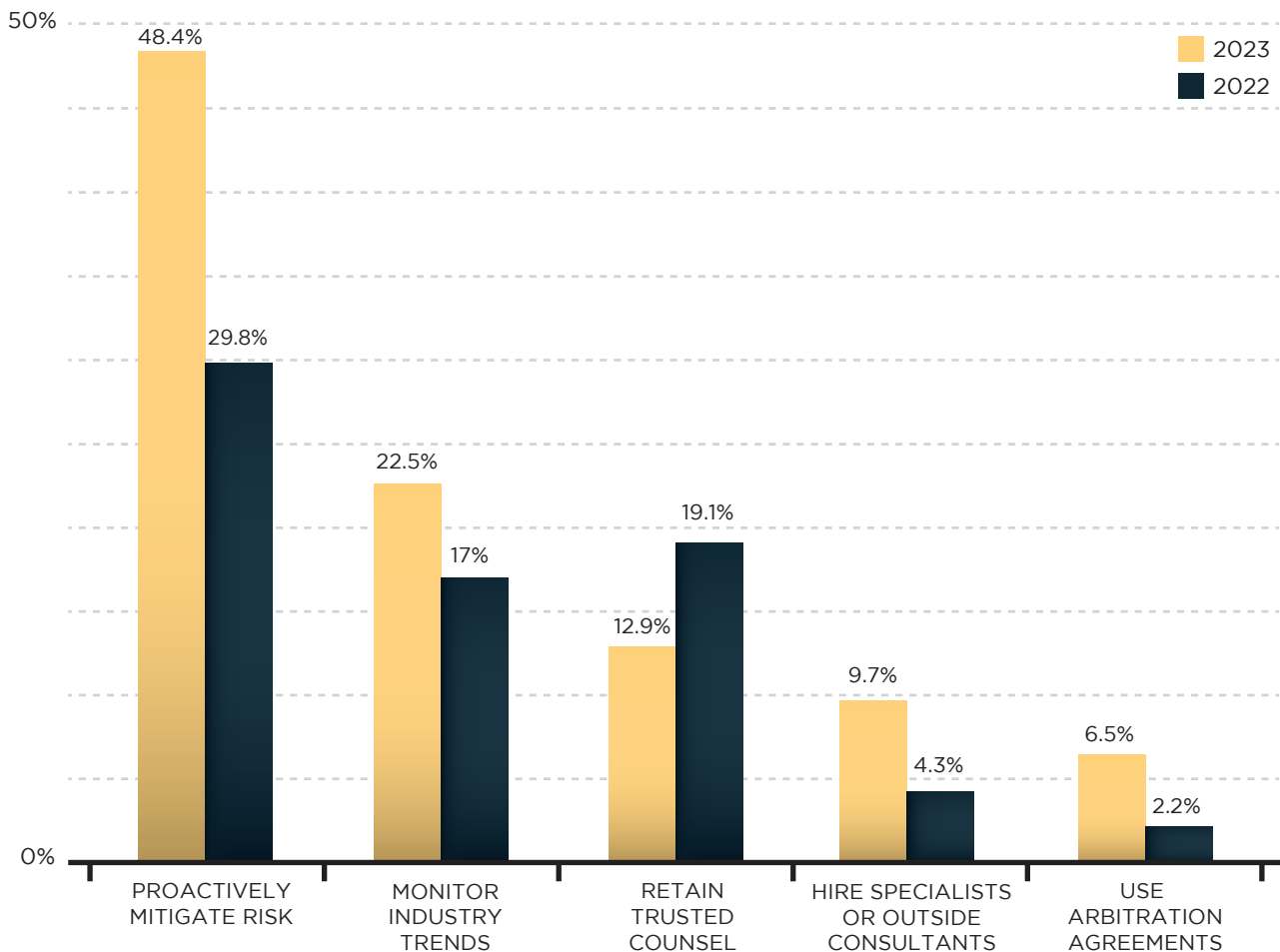
– Associate General Counsel
Fortune 500 Transportation Company



Companies Proactively Mitigate Risk, Watch Trends to Avoid the Next Wave of Class Actions

About 48% of companies are looking proactively to reduce the risk of the class actions they see coming in the next wave. This would include changing processes and procedures to avoid the anticipated actions. This is occurring one-third more often than last year. About 23% of companies watch industry trends to avoid class actions before they happen. Arbitration clauses are a small but potentially growing part of the strategy but are growing year over year, despite public and investor pressure to avoid these.

Approach to Managing Upcoming Class Actions
PERCENT OF COMPANIES



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IN THEIR OWN WORDS:

CORPORATE COUNSEL ON THEIR APPROACH TO MANAGING NEW CLASS ACTIONS

What are you doing to prepare for the anticipated “next wave” of class actions, before those actions are filed against your company?



The plaintiffs’ bar [to filing class actions] is so low and [plaintiffs’ counsel] can be so creative it’s sometimes hard to anticipate. But when we do find problems, we are very intentional about fixing them and making them right as they come up.

– Associate General Counsel
Fortune 500 Insurance Company

We are constantly on top of improving our policies, adjusting procedures, and buttoning everything up.

– Associate General Counsel
Prominent Transportation Company

We have to meet strict compliance laws and we are very diligent about compliance. There isn’t much you can do if someone is disgruntled, though.

– General Counsel
Large Financial Services Company

We monitor what is happening in our industry and in our specific business practices and determine which ones could be open to an attack.

– General Counsel
Prominent Insurance Company

We have an outside consultant that keeps us informed and prepares us for what may be coming down the pike.

– Vice President, General Counsel
Large Private University

When technology is involved, we have people who are focused on that topic and have the expertise to plan for those occasions and ensure we are not on the target list.

– Expert Counsel, Global Litigation
Multinational Manufacturing Company

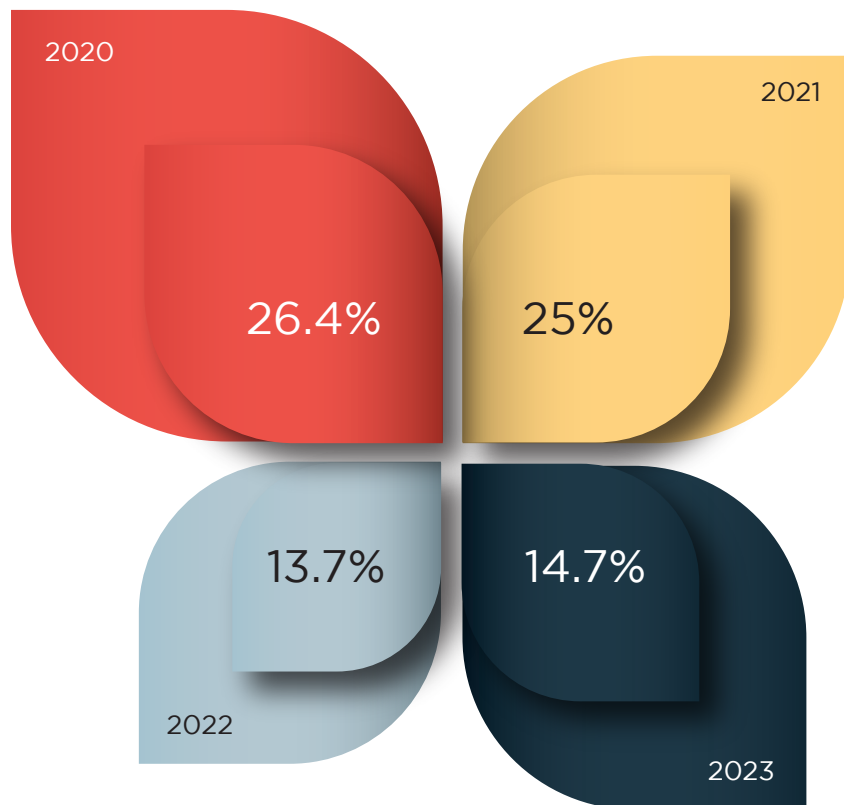


CURRENT IMPACT OF THE PANDEMIC ON CLASS ACTION FILINGS

Few Companies Still Face Class Actions Arising Out of the Coronavirus Pandemic

The percentage of companies facing cases related to COVID-19 is in line with last year. Corporate counsel expect few new COVID-19-related class actions. Companies report class actions arising out of the pandemic are mainly workforce issues, including employment claims related to wage and hour, discrimination, hybrid work policies, and unsafe work environments.

Defending COVID-19-Related Class Actions
PERCENT OF COMPANIES



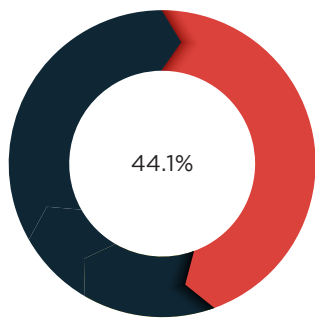
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USE OF GENERATIVE AI IN CLASS ACTION DEFENSE

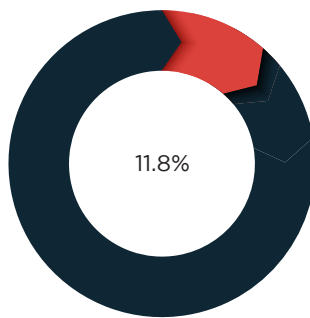
Data Privacy Tops List of Potential Class Actions Arising From the Use of Generative AI

Data privacy dominates the expected class actions arising from the use of generative AI. Corporate counsel see claims arising from the following: unintended release of sensitive data, misuse of artificial intelligence, limited controls over access, and targeted phishing using chatbots. Discrimination ranks a distant second as a potential basis for expected class actions.

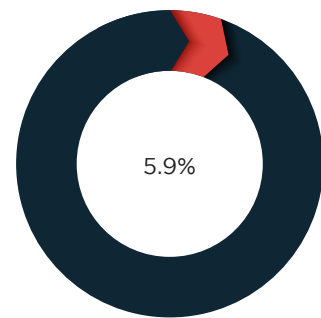
Types of Generative AI-Related Class Actions PERCENT OF COMPANIES



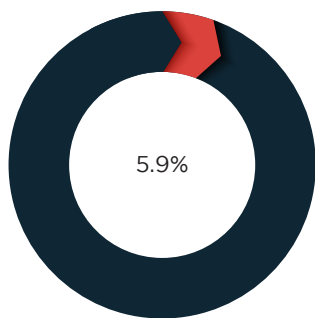
DATA PRIVACY & CYBERSECURITY



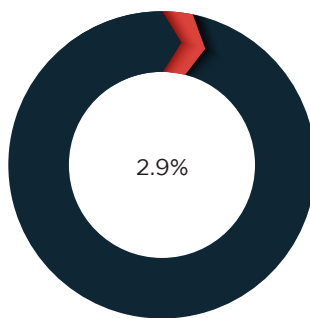
DISCRIMINATION



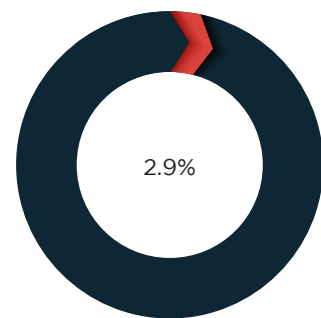
INTELLECTUAL PROPERTY



INSURANCE CLAIMS



DEFAMATION



SECURITIES FRAUD

Note: Chart does not add up to 100%. Excludes other responses under 3%.
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IN THEIR OWN WORDS:

CORPORATE COUNSEL ON THE USE OF GENERATIVE AI

What kinds of class actions will arise from the use of generative AI?



I suspect the use of generative AI could result in data leaks and privacy issues if confidential information is released.

– Deputy General Counsel
Prominent Regional Bank

It's not here yet, but they are coming. I think we will see ownership issues related to work product, privacy, and potential claims of discrimination made in error.

– Vice President, Associate General Counsel
Fortune 500 Retailer

I know some attorneys are starting to bring lawsuits against the use of these bots because the conversations and exchanges are being recorded.

– Assistant General Counsel
Large Health Care Company

Copyright infringement could be an issue, and if we use it for some level of design interface you could have potential product infringement or product liability class actions.

– General Counsel
Large Manufacturer

I'm struggling with this in my industry, but I think it will probably be discrimination because much of the information already has an inherent bias built in.

– General Counsel
Large Insurance Company

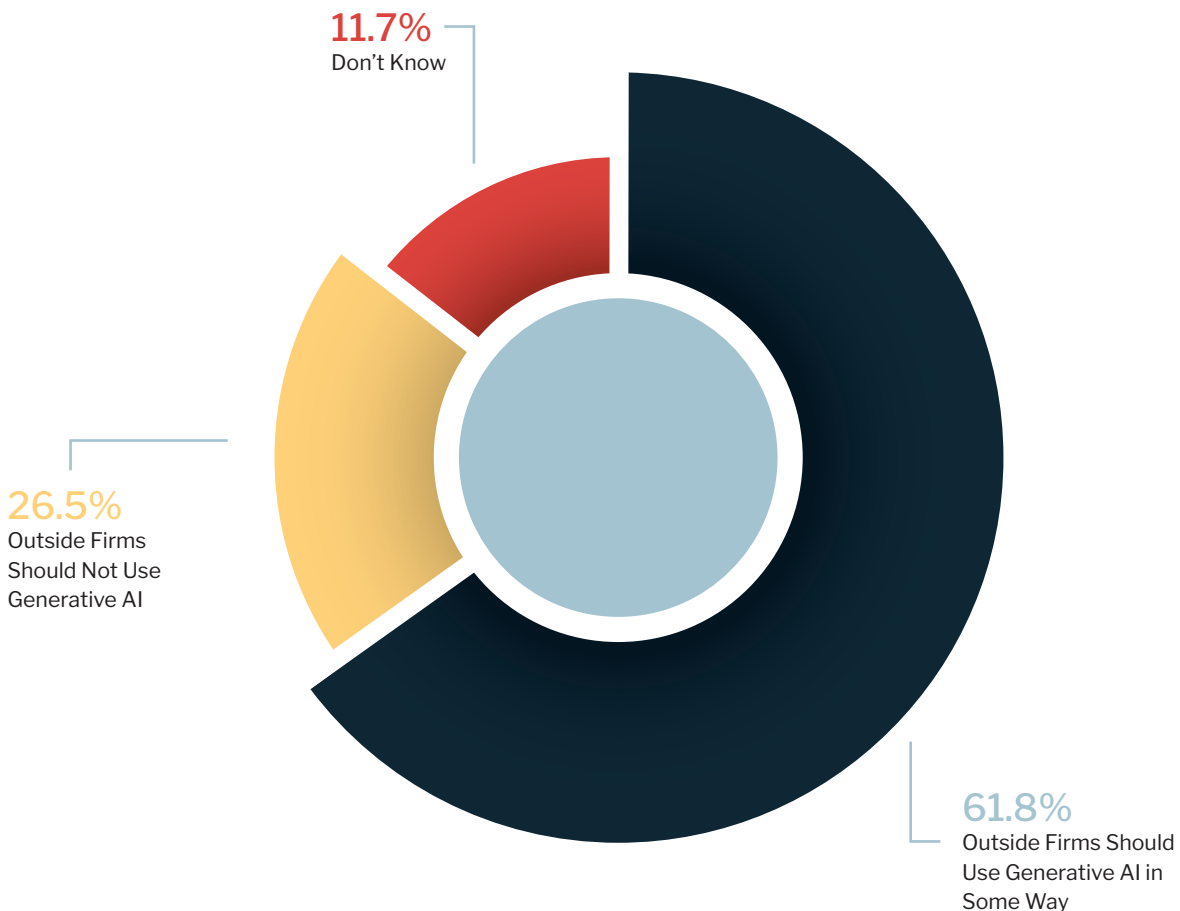
Putting out wrong and harmful information to the public that could be libelous and defamatory.

– Vice President, General Counsel
Large Private University



Companies Would Explore Outside Counsel Using Generative AI in Defense

Companies overwhelmingly believe outside counsel should be using generative AI in some capacity (see page 47 for details about how). One in four corporate counsel defending class actions believe their outside counsel should not use generative AI. This is primarily due to unknown risks and unproven results. While survey respondents expressed interest in exploring generative AI for potential cost-savings, there were few examples of actual adoption or success from respondents. For cost-saving measures that in-house counsel report as working over time, see pages 37-38 of this survey. These results suggest corporate counsel are well served by asking their outside counsel how and when their outside counsel use generative AI.

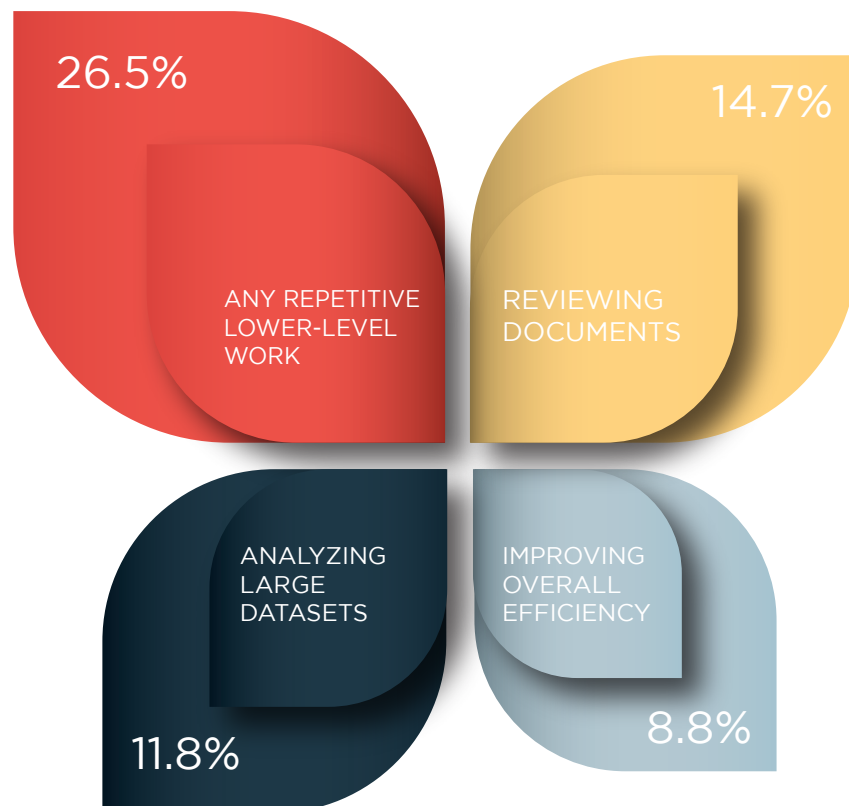


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Companies See Potential in Using Generative AI for Repetitive Tasks

More than a quarter of corporate counsel report that repetitive and lower-level work are the top candidates for using generative AI as part of defending class actions. Another 14.7% see a more limited role, citing document review, where companies have used other forms of artificial intelligence, such as technology-assisted review, successfully for years. A small but strategic group – 11.8% – want outside counsel to use generative AI to come up with new insights from analyzing large datasets. Their goal is to find new data, or trends from that data, to support their defense. The risk of such use may not be fully understood, and the development of these tools is still in a very early stage.

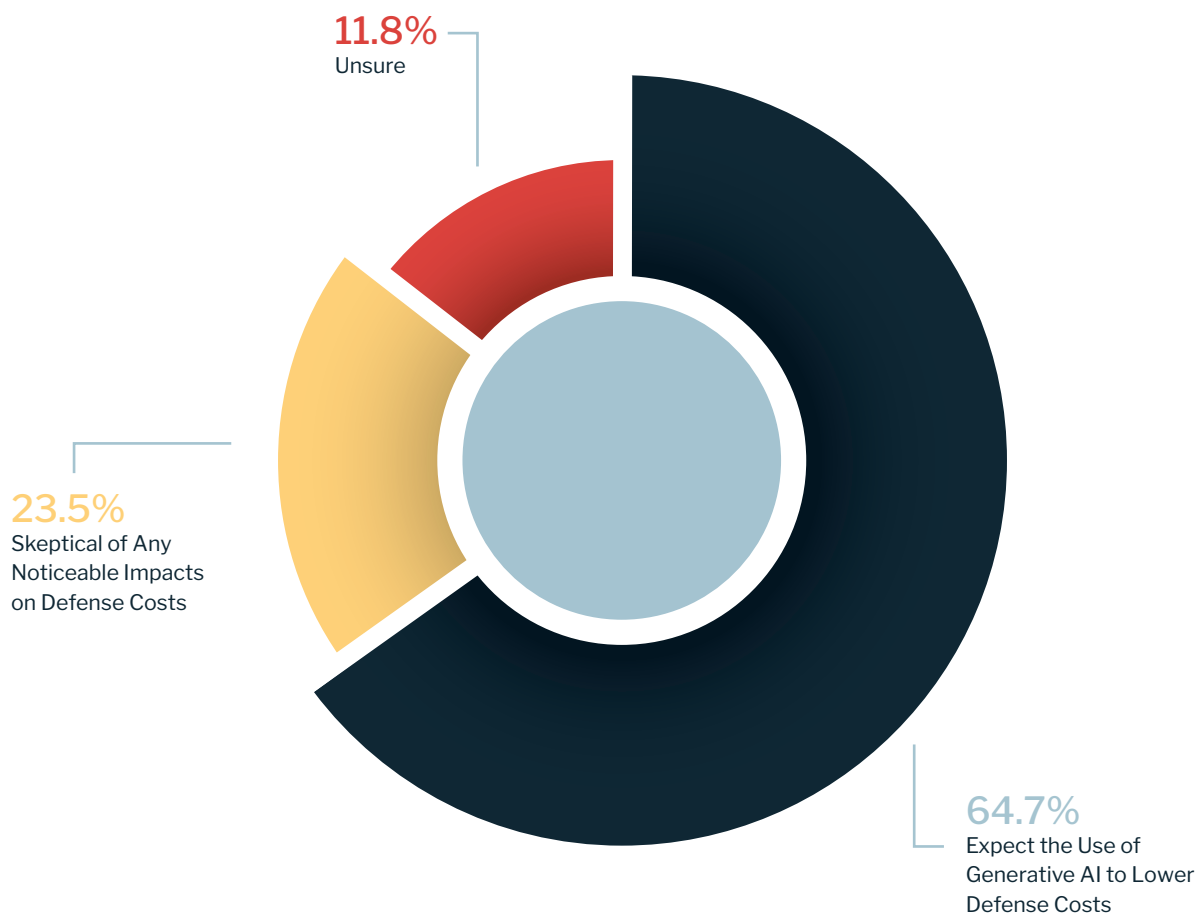
How Generative AI Should Be Used in Defending Class Actions
PERCENT OF COMPANIES



Note: Chart does not add up to 100%. Excludes other responses under 3%.
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Most Companies Hope That Law Firms' Use of Generative AI Lowers Defense Costs

Almost two-thirds of corporate counsel hope that outside counsel use of generative AI will lower defense costs. They are hopeful that the benefits of this technology will offset the costs of class actions as they become bigger and more complex. About 24% are skeptical of any noticeable changes or impacts on costs as a result of outside law firms using generative AI.

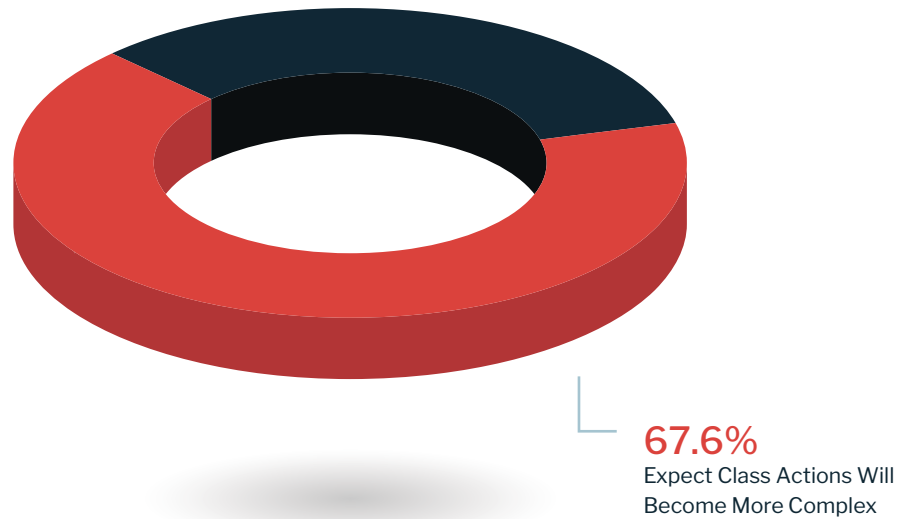


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THE FUTURE OF CLASS ACTIONS

Two-Thirds of Companies Expect More Complexity in Future Class Actions

Two-thirds of companies expect class actions will become more complex. The primary reasons include larger claims and more new and novel claims including: AI-related, labor, data privacy, deglobalization, social media usage, and creativity from plaintiffs' attorneys.

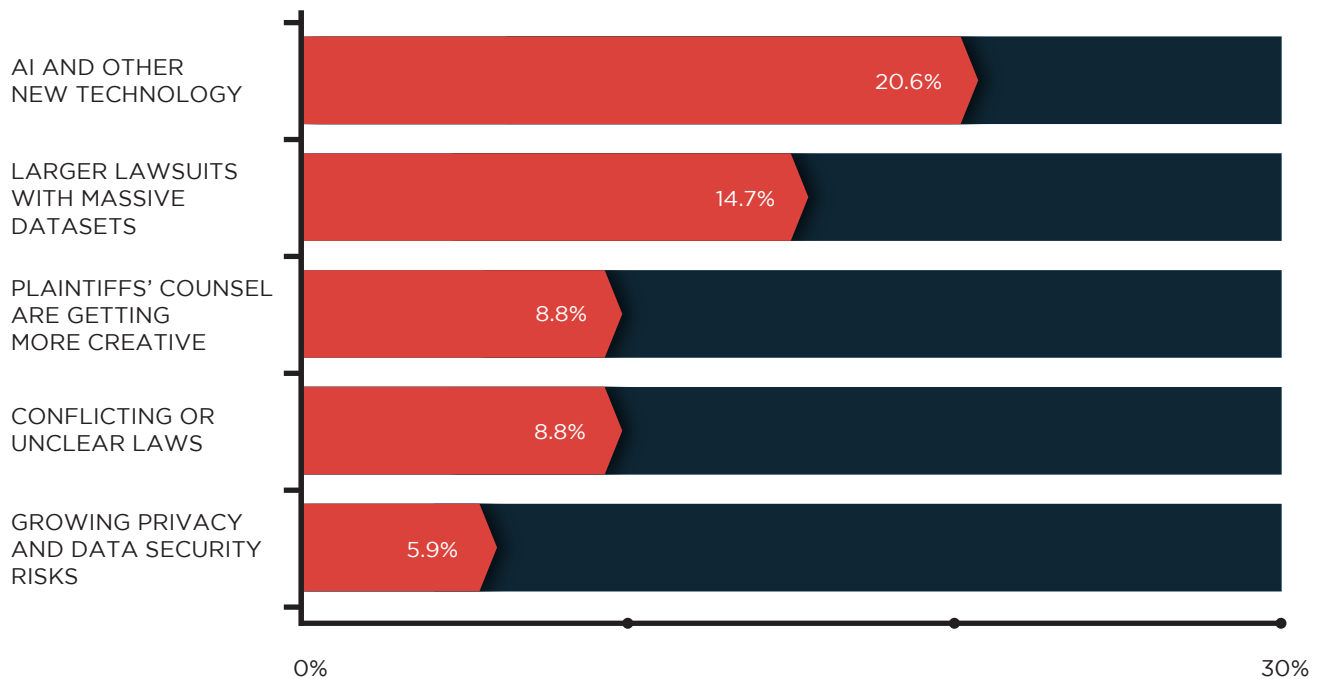


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Technology, Data Drive Increased Complexity in Class Actions

As discussed on page 49, 67.6% of companies expect class actions to become more complex. Technology and data-related issues are large factors in bringing more complexity. Increasing size of claims drives future complexity. Global economic shifts including reconfiguring supply chains and deglobalization will add to complexity. Conflicting or unclear laws take the blame for a smaller but important portion of class actions.

Why Class Actions Will Become More Complex PERCENT OF COMPANIES



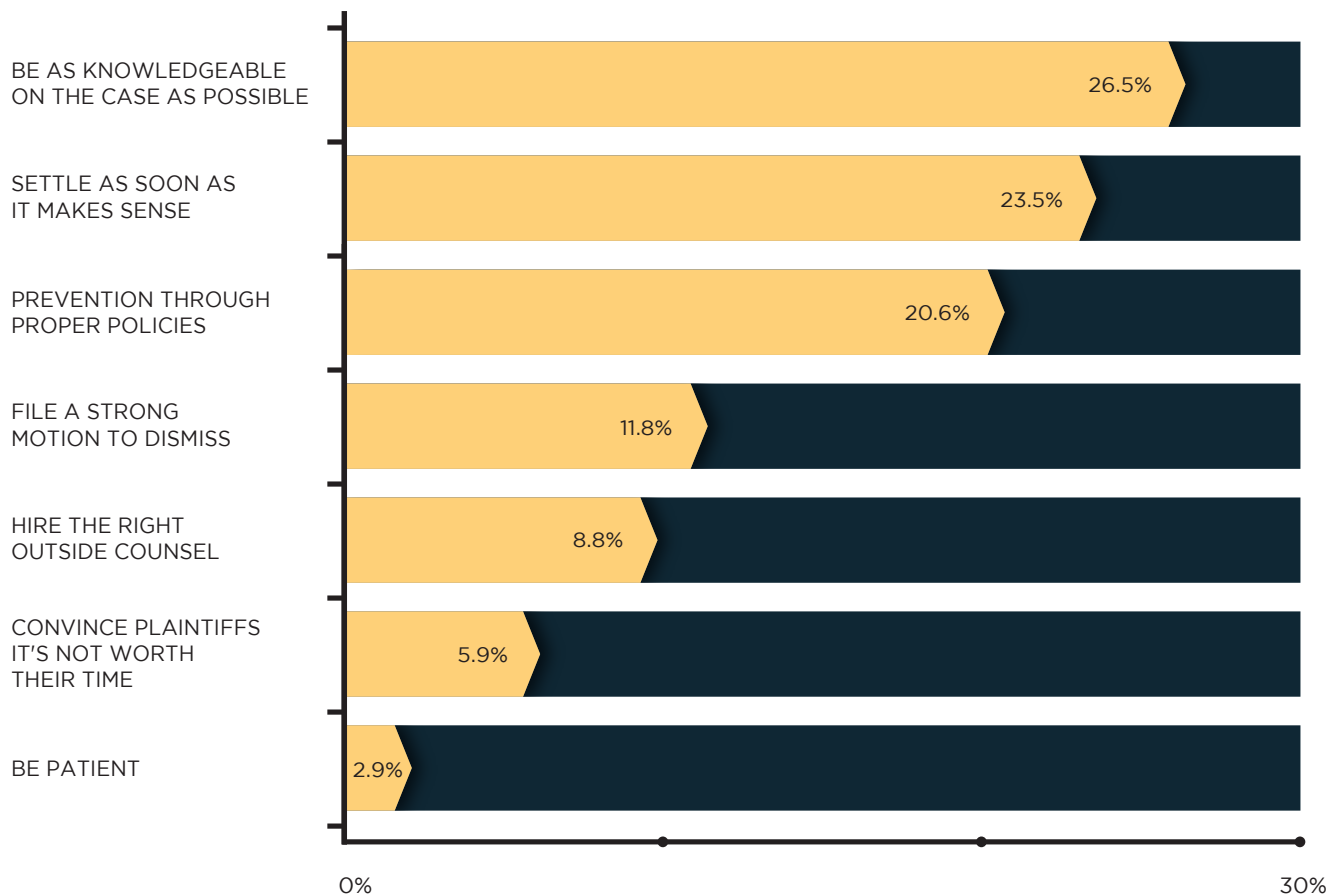
Note: Chart does not add up to 100%. Excludes other responses under 5%.

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Knowledge, Strategy, and Prevention Top List of Secrets to Beat Class Actions

Knowing your case inside and out is the key to winning class actions for 26.5% of companies – they indicate the time invested in understanding the details and nuances makes for a better defense and collaboration with outside counsel. Settling class actions is the second-biggest secret to beating class actions, as risk and fees immediately end. Institutional prevention through policies and procedures ranks third in secrets to beating class actions. The remaining reasons focus on a strong defense.

The Unwritten Secret to Beating a Class Action
PERCENT OF COMPANIES



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METHODOLOGY AND APPROACH

The 2024 *Carlton Fields Class Action Survey* results were compiled from 332 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 \$21.7 billion and a median annual revenue of \$16.1 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 managing class action litigation.

If you would like to learn about the survey and how these results may impact you, please contact **John E. Clabby** at 813.229.4229, jclabby@carltonfields.com, or **D. Matthew Allen** at 813.229.4304, mallen@carltonfields.com.

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



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