



Smooth Sailing

Managing Risk and Cost in Defending Class Actions

Naomi Berry, Trish Carreiro, Aline Drucker, and Derek Harris

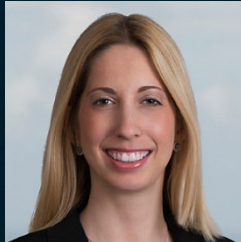


INTRODUCTIONS, METHODOLOGY, AND APPROACH





Presenters



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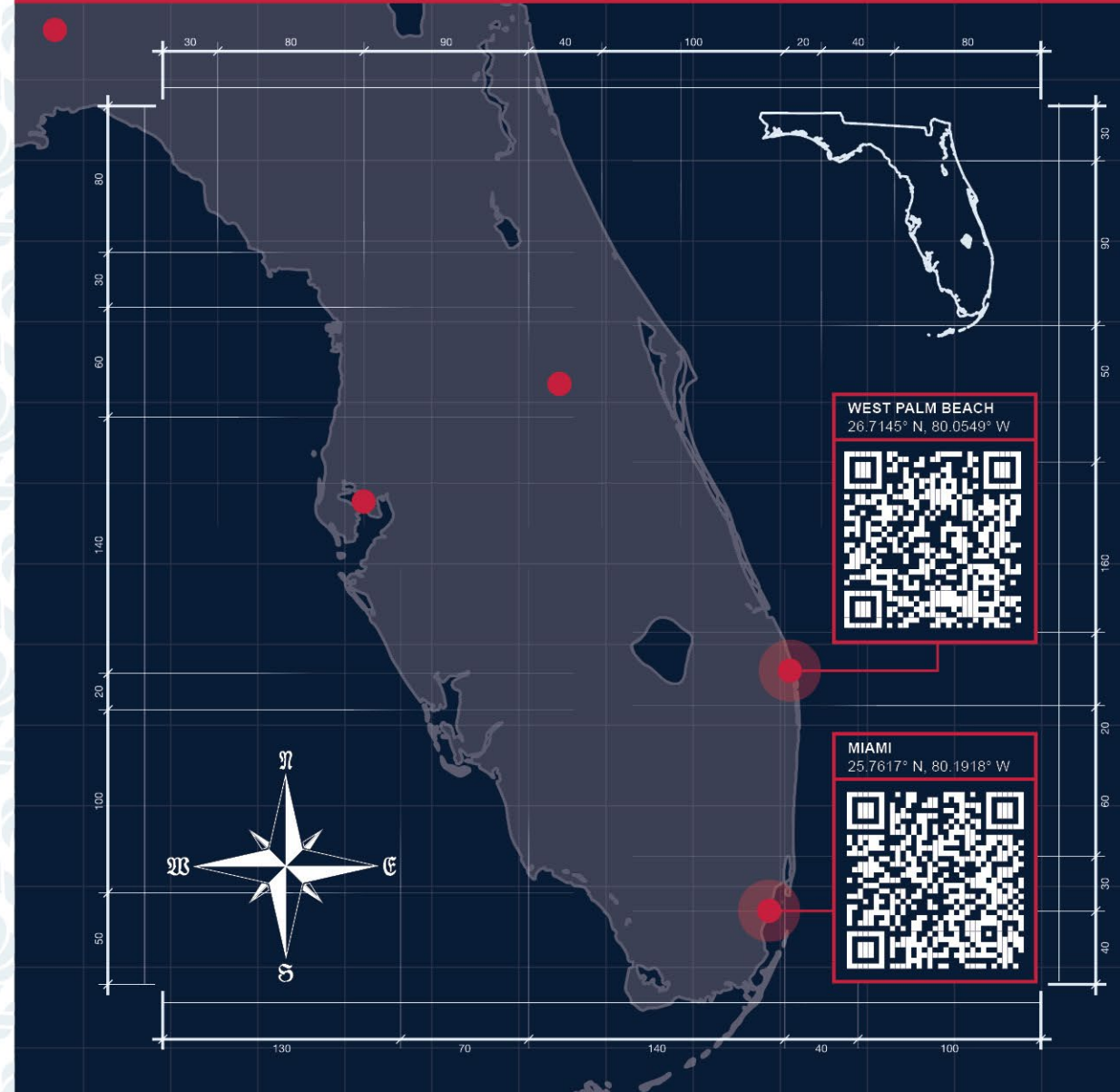


METHODOLOGY AND APPROACH

The 2025 *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.

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. Individual responses and company names are kept confidential and excluded from the survey results.

The *Survey* is in its 14th year.





RESULTS





How much did U.S.-based companies spend on class action defense in 2024?

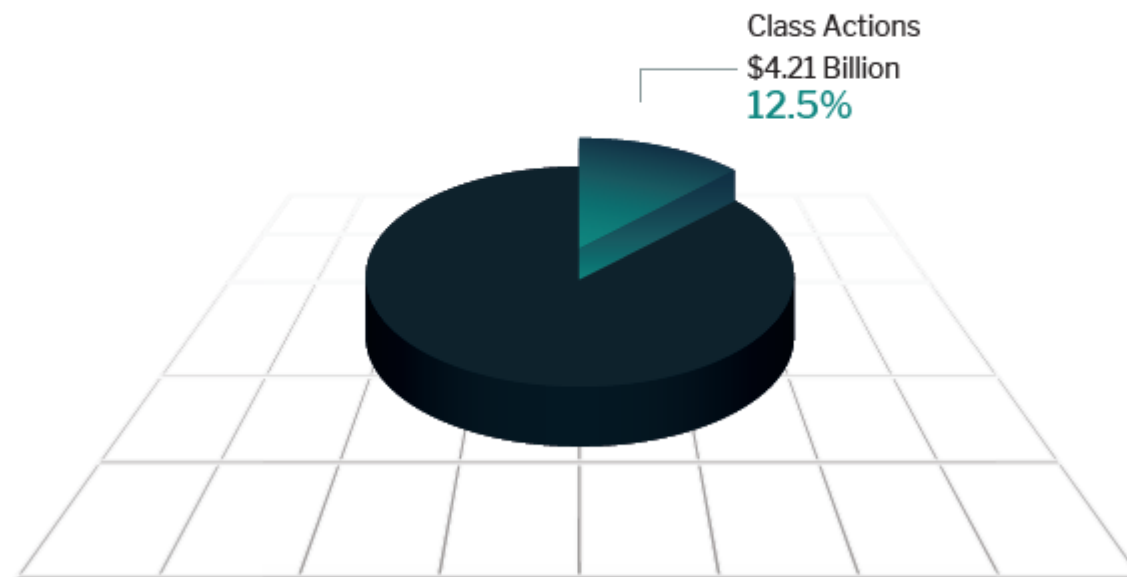
- a. \$3.9 billion
- b. \$4.21 billion
- c. \$4.53 billion
- d. \$5 billion



b. \$4.21 billion

Spending on class actions now accounts for 12.5% of corporate litigation budgets, up from 12.3% last year. For the first time, spending on class actions has surpassed \$4 billion — an increase of \$300 million compared to the previous year. Class action defense remains one of the fastest-growing areas of legal spending.

**\$4.21 Billion Spending on Defense of Class Actions by U.S.-Based Companies
WITH MORE THAN \$1 BILLION IN REVENUE**



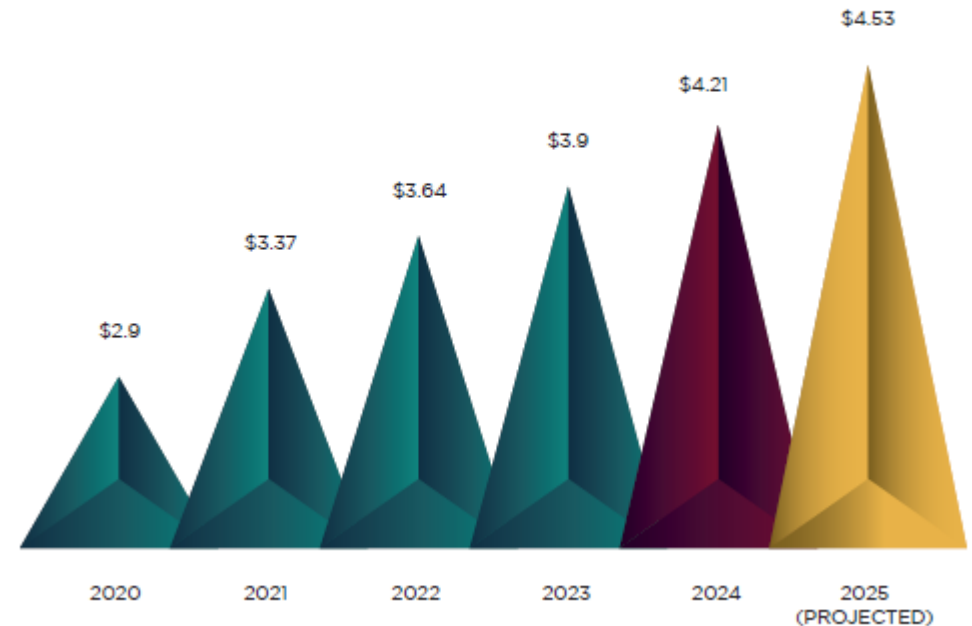
Note: Actual corporate legal spending was larger than projected for 2024 at the time of publishing the 2024 Class Action Survey. As a result, the percentage of spending on class actions for 2024 is slightly lower than published in the 2024 Class Action Survey.



Class Action Defense Spending Projected to Reach \$4.53 Billion

Corporate legal spending on defending class actions is projected to grow at 7.6% — one of the highest growth rates in legal spending. This increase is driven by four major factors: more companies are facing class actions, the growing complexity of claims, the emergence of new claims, and the increasing size of claims.

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





Which two areas dominate class action matters and spend

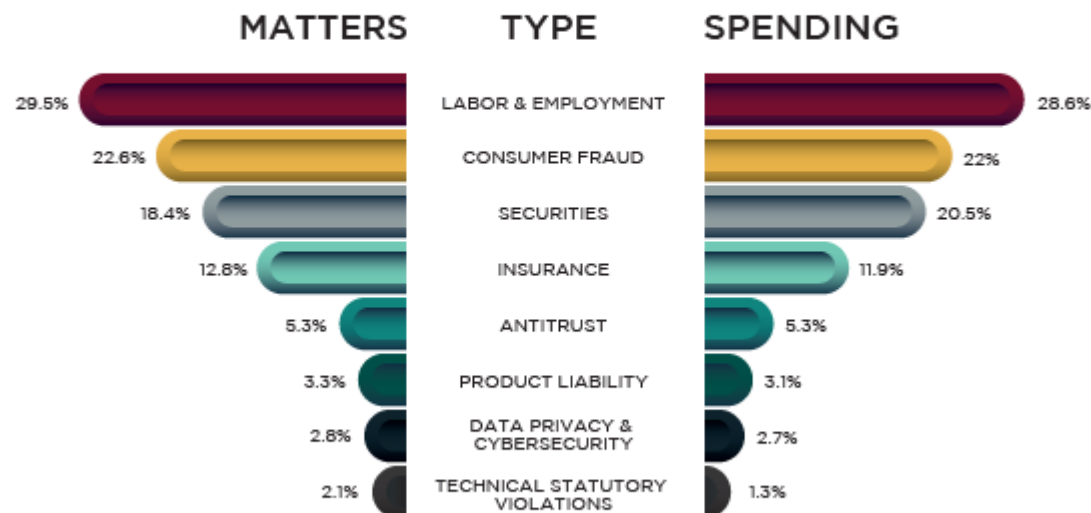
- a. Labor & Employment, Consumer Fraud
- b. Securities, Antitrust
- c. Data Privacy, Product Liability
- d. Insurance, Technical Statutory Violations



a. Labor & Employment, Consumer Fraud

Labor and employment remains the leading area for both class action matters and spending, driven by ongoing layoffs, increased employee access to resources to join class actions, new regulations, wage and hour claims, and a more aggressive workforce. Consumer fraud ranks second in both matters and budgets, fueled by rising actions related to the use of personal information, heightened regulatory scrutiny, and conflicts between new products and services and evolving consumer attitudes and interests.

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



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What are corporate legal officers predicting will be the next wave in class actions?

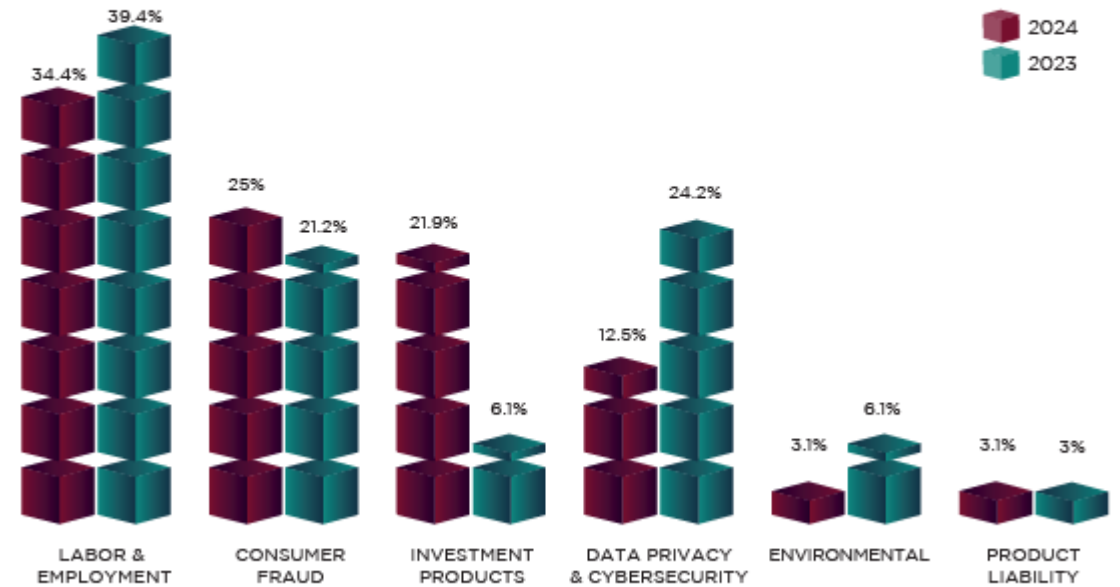
- a. Data Privacy and Cybersecurity
- b. Product Liability
- c. Investment Products
- d. Labor & Employment
- e. Consumer Fraud



d. Labor & Employment

Labor and employment class actions remain the largest anticipated next wave. Key drivers include workforce activism, discrimination claims, “backdoor layoffs,” and unionization attempts, which remain at historically high levels. Consumer fraud class actions have risen to the No. 2 spot, driven by claims related to the use of personal information, the introduction of complex new products and services, and company statements on social media. Investment product class actions have surged, fueled by the growing number of new offerings featuring high-risk and volatile investments, including derivatives and real estate.

Next Wave of Class Actions
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In Their Own Words

CORPORATE COUNSEL ON THE NEXT WAVE OF CLASS ACTIONS

“

There will be more class actions related to increased and inflated fees for the management of companies' 401(k) plans that may have limited earnings.

– Chief Claims Officer
Large Insurance Company

A move in California to use the California Invasion of Privacy Act (CIPA) as a vehicle to assert causes of action for commercial websites and the software on websites that capture consumer information.

– Vice President, General Counsel, Litigation
Leading Services Company

The proliferation of litigation funders will make our securities, consumer fraud, and employment cases last longer and become more complex to resolve and get rid of.

– Senior Vice President, Global Claims Officer
International Insurance Company

Generative AI, data breaches, and privacy are the new frontier.

– President & CEO
Large Technology Company

Cases related to PFAS ('forever chemicals') are coming because they are in everything.

– Senior Assistant, General Counsel
Global 500 Insurance Company

Most of what I see coming is in the technology space. Plaintiffs' attorneys are applying old statutes to new technology and trying to make cases develop.

– General Counsel, Global Litigation
Fortune 500 Manufacturer

”



What percentage of companies reported facing at least one cybersecurity incident in action in 2024?

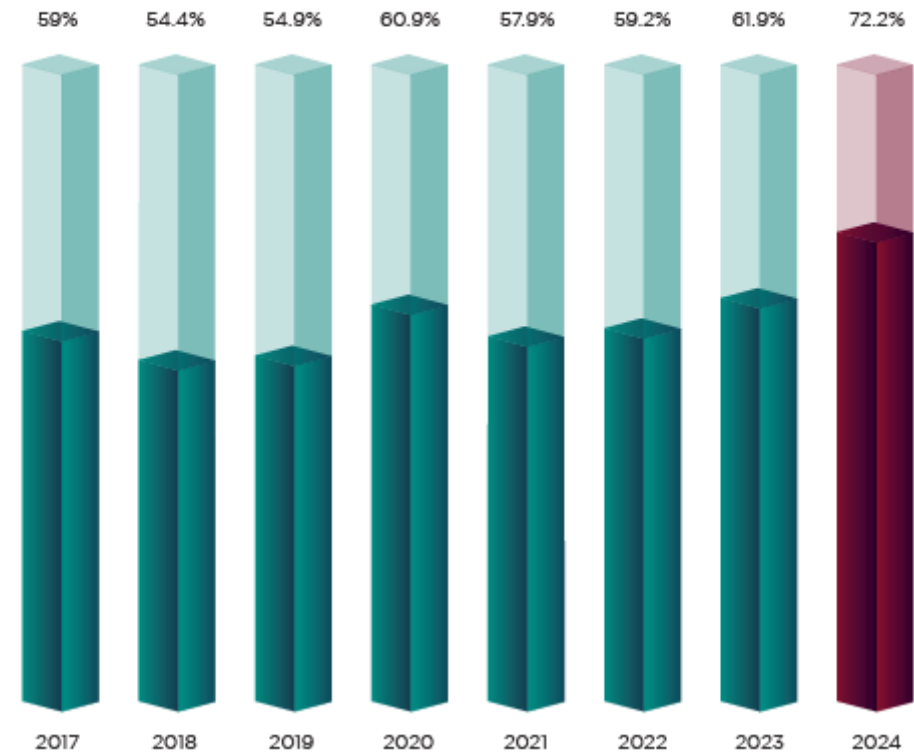
- a. 61.9%
- b. 63.5%
- c. 72.2%
- d. 80%



c. 72.2%

The percentage of companies facing class actions has reached its highest level in 14 years. This is driven by a more aggressive litigation environment, an activist workforce, data privacy concerns, growth in new financial products, the introduction of new products and services, and increasing creativity among plaintiffs and plaintiffs' counsel.

Companies With Class Actions
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On average, how many additional class action matters per company are expected in 2025?

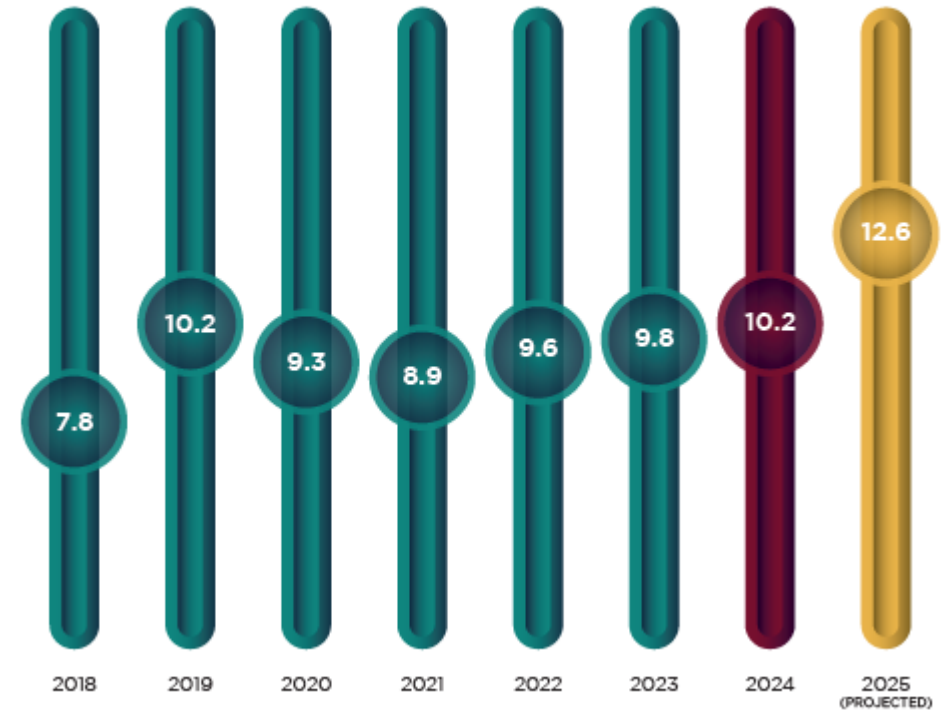
- a. +1.0
- b. +1.7
- c. +2.5
- d. +3.2



c. +2.5

Companies expect a 20% increase in the number of class actions they face, adding an average of 2.5 additional claims in 2025. They attribute this increased caseload to a hostile and litigious environment, coupled with plaintiffs' growing reluctance to settle.

Current Class Actions
AVERAGE NUMBER OF MATTERS PER COMPANY



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In 2024, how many extra hours per week ~~do~~ ^{did} attorneys spend managing class actions compared to the prior year?

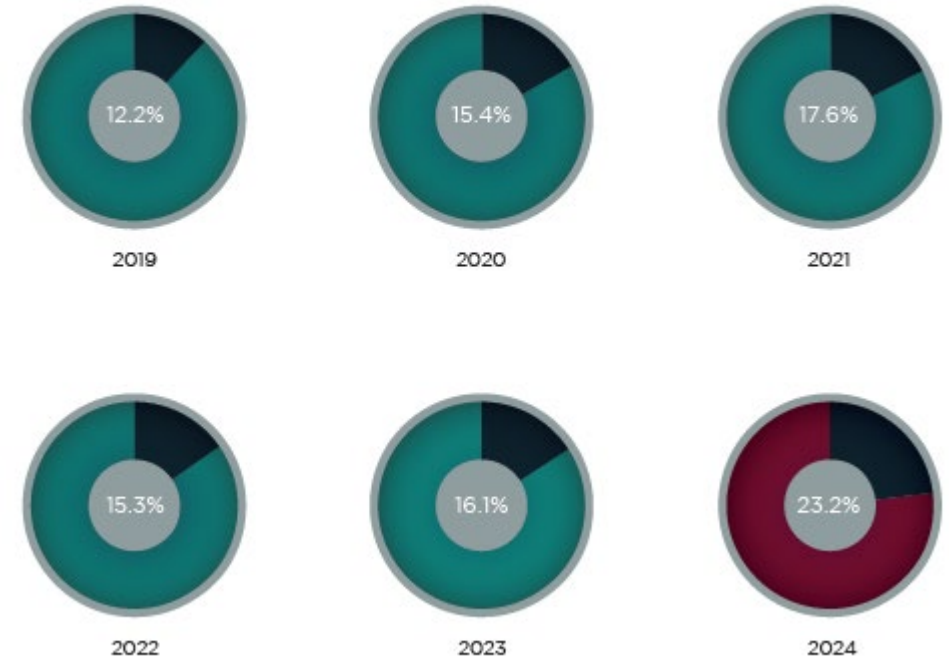
- a. 3 hours
- b. 5 hours
- c. 7 hours
- d. 10 hours



c. 7 hours

In-house attorneys working on class actions are spending 45% more time on these matters than last year, reflecting increased complexity. This amounts to approximately 350 hours per year, up from 188 hours last year — equivalent to more than one extra, seven-hour day per week.

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



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What type of class action do companies now identify as the biggest risk for 2024?

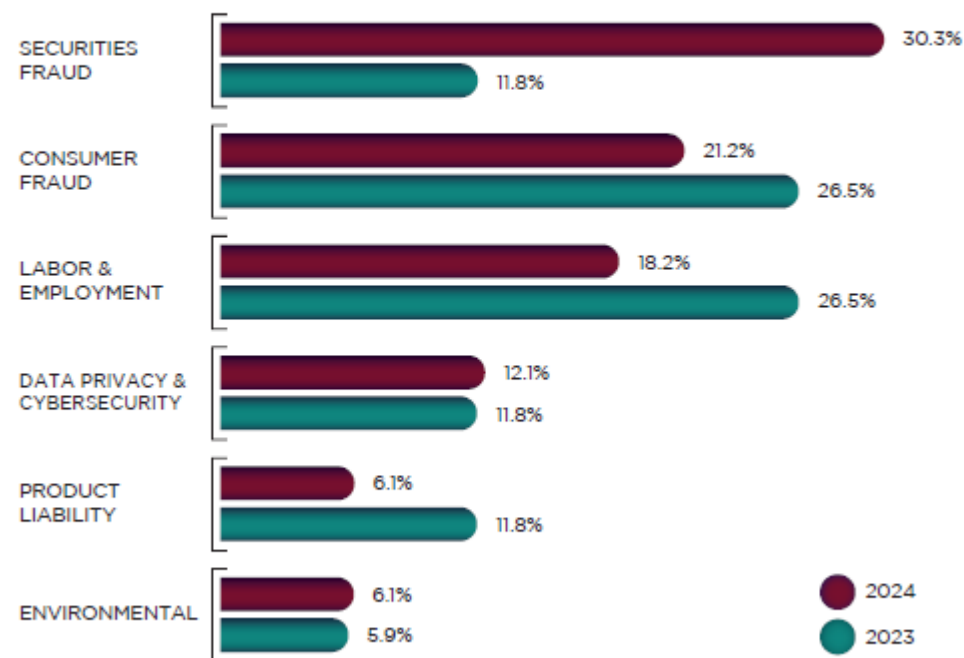
- a. Labor and employment issues
- b. Consumer fraud
- c. Securities fraud
- d. Data privacy incidents



c. Securities Fraud

Securities fraud is the largest risk for 2024, presenting more than 2.5 times the risk seen last year. Key drivers include volatile stock performance leading to alleged investor losses, sharp market reactions to missed earnings expectations and forward guidance, increased investor activity spotlighting perceived stock underperformance, and heightened regulatory scrutiny of filings and securities-related activities. While corporate counsel have gained a better understanding of most other risks compared to prior years, these are now overshadowed by the growing threat of securities fraud allegations.

Class Actions Posing the Biggest Risk
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Note: Chart does not add up to 100%. Excludes other responses under 4%.
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In Their Own Words

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

“

Securities class actions because damages are typically very significant. Also, cyber and privacy-related class actions, which can also have significant levels of exposure and damage.

– Executive Vice President, Claims
Global Professional Services Company

Securities, due to exposure and privacy, which destroys reputations.

– Head of Financial Claims
Fortune 500 Insurance Company

A shareholder derivative and related class action is always the most damaging for our company.

– Associate General Counsel
Fortune 500 Transportation Company

Any consumer-related class actions that go against our reputation as well as any data privacy cases.

– Vice President, Associate General Counsel
Fortune 500 Retail Company

Because we are a financial services company, there are consumer protection statutes that pose the biggest risks to us. They tend to be very difficult to get rid of because they never have causation.

– Vice President, Senior Litigation Counsel
Fortune 500 Financial Services Company

Class actions related to our websites and the claims that we are falsely collecting consumer data.

– Vice President, General Counsel, Litigation
Large Professional Services Company

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Which alternative fee arrangement is the most efficient for actions?

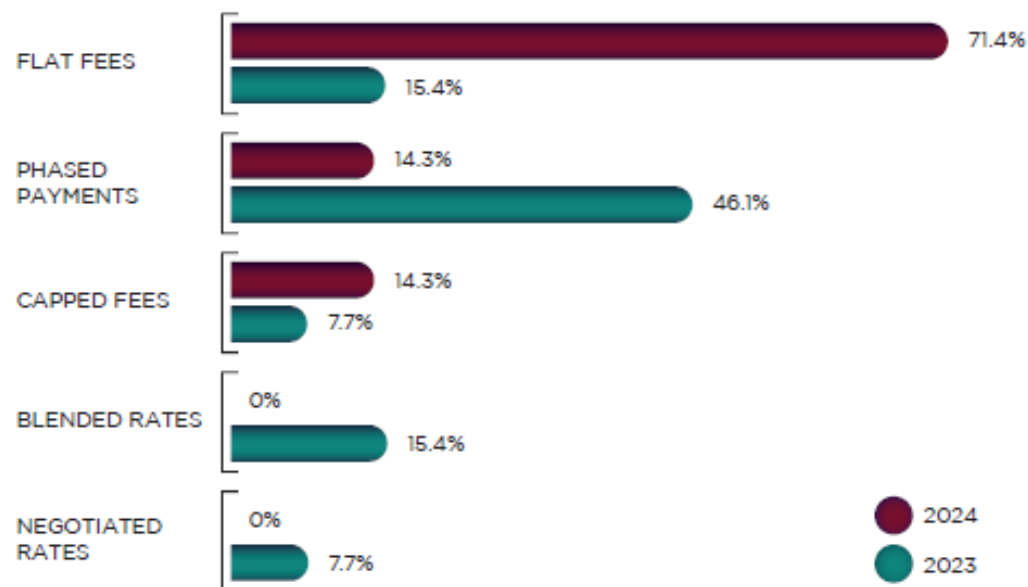
- a. Negotiated rates
- b. Phased payments
- c. Blended rates
- d. Flat fees



d. Flat fees

Flat fees have replaced phased payments as the top AFA in class actions. Key drivers include coverage of the entire matter, simplified administration, increased focus on goals, improved law firm performance as reported by corporate counsel, and minimal budget risk. Companies typically use flat fee engagements for lower-risk matters, and phased fees, higher-dollar capped fees, or non-AFAs for high-risk and bet-the-company matters.

Success of Alternative Fee Arrangement Types in Class Actions
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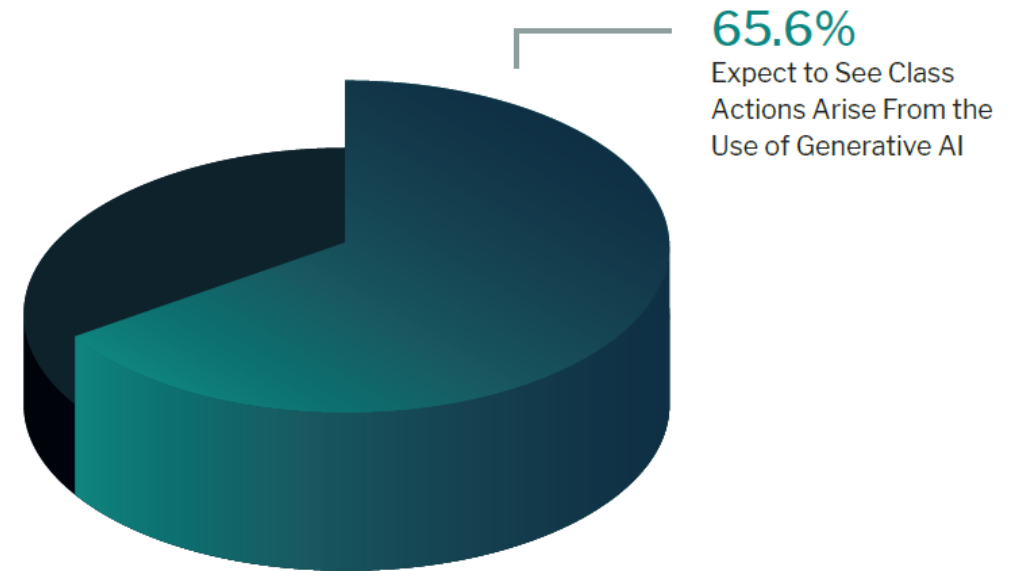
What emerging risk did ~~two~~ words of corporate counsel expect to trigger new class actions?

- a. Blockchain/cryptocurrency
- b. Generative AI usage
- c. Environmental regulation
- d. Social media defamation



b. Generative AI usage

Nearly two-thirds of corporate counsel expect new class actions to arise from the use of generative AI. They anticipate issues related to privacy and data misuse, new claims without legal precedent, and the novel use of proven class action claims modified for generative AI — often testing with smaller defendants before targeting larger companies.



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Most companies rely on a small group of outside firms to handle all of their class action work.

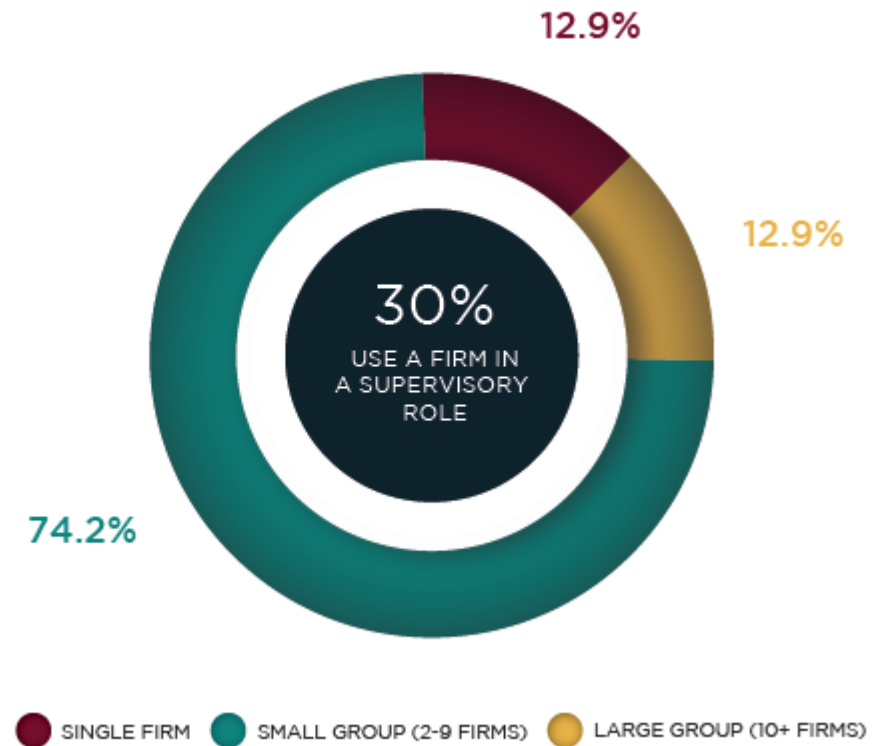
- a. True
- b. False



a. True

Seventy-four percent of corporate counsel rely on a small group of law firms to defend class actions. The benefits include building a knowledge base specific to class actions, better risk management through a more uniform approach and deeper understanding of the issues, a more focused understanding of client goals, and improved cost control. Only a small segment of companies use 10 or more law firms for class action defense, even as the caseload grows. In-house attorneys report that the management burden of a larger group of law firms often outweighs any potential benefits. Additionally, 30% of companies now use a single law firm in a supervisory role, up from 23.5% last year.

Role of Firms in Class Action Work
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Which strategy is tied with settling cases and budget super as one of the most effective ways to control or reduce class action costs?

- a. Using trusted outside counsel
- b. Expanding in-house legal teams
- c. Increasing use of arbitration clauses
- d. Delaying settlement negotiations



a. Using trusted outside counsel

Using trusted counsel remains one of the most effective ways to control or reduce costs, tied with settling and budget supervision. Virtually all approaches are viewed as highly effective. Bundling similar cases with the same outside counsel is considered effective by 81.3% of companies, and it can be used in conjunction with other cost control tools.

Cost Reduction Policies and Practices
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Which strategy replaced “failure to state a claim” as the most successful class action defense?

- a. Lack of typicality
- b. Absence of commonality and predominance
- c. Lack of actual injury
- d. Summary judgment before certification

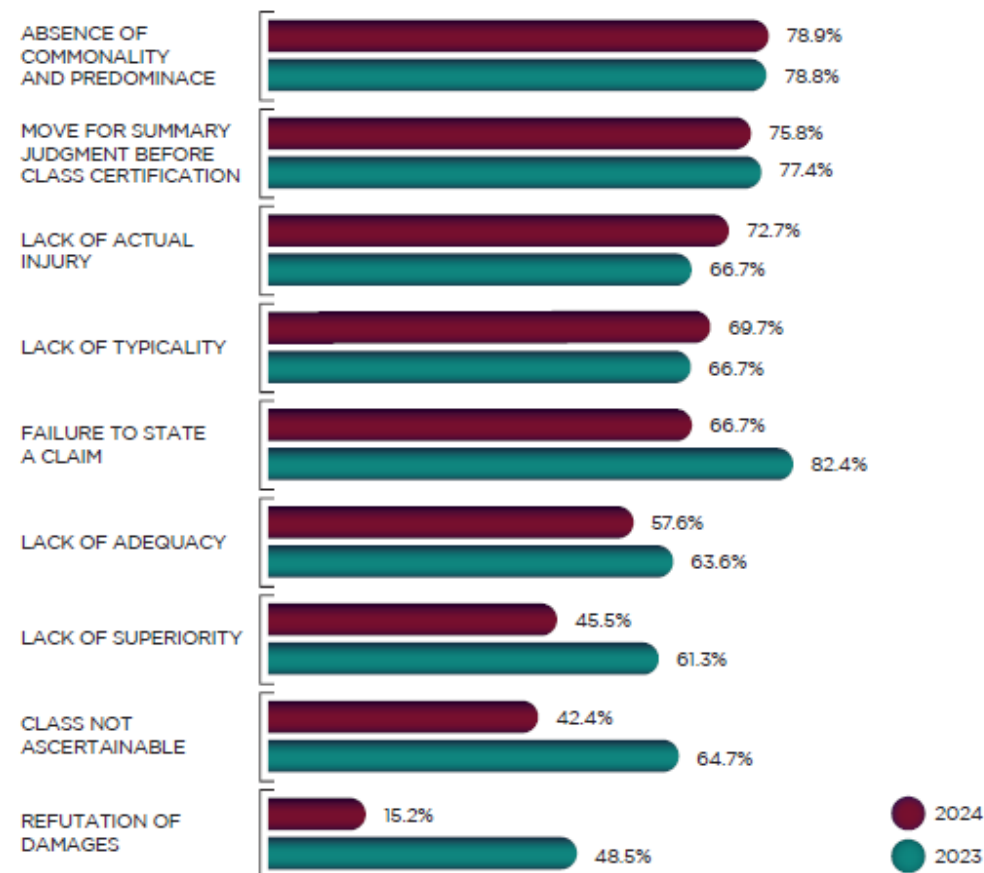


b. Absence of commonality and predominance

Three defense strategies have emerged as the most effective: the absence of commonality and predominance, which has replaced failure to state a claim as the top defense; a motion for summary judgment before class certification, which now ranks as the No. 2 defense; and lack of injury, a standing argument that comes in at No. 3.

While several defenses declined in reported success since last year, both ascertainability and refutation of damages decreased substantially, perhaps recognizing legal authority in certain jurisdictions that can be read to limit their effectiveness.

Successful Class Action Defenses
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Which strategy do nearly one in four companies view as the “unwritten secret” to beating a class action?

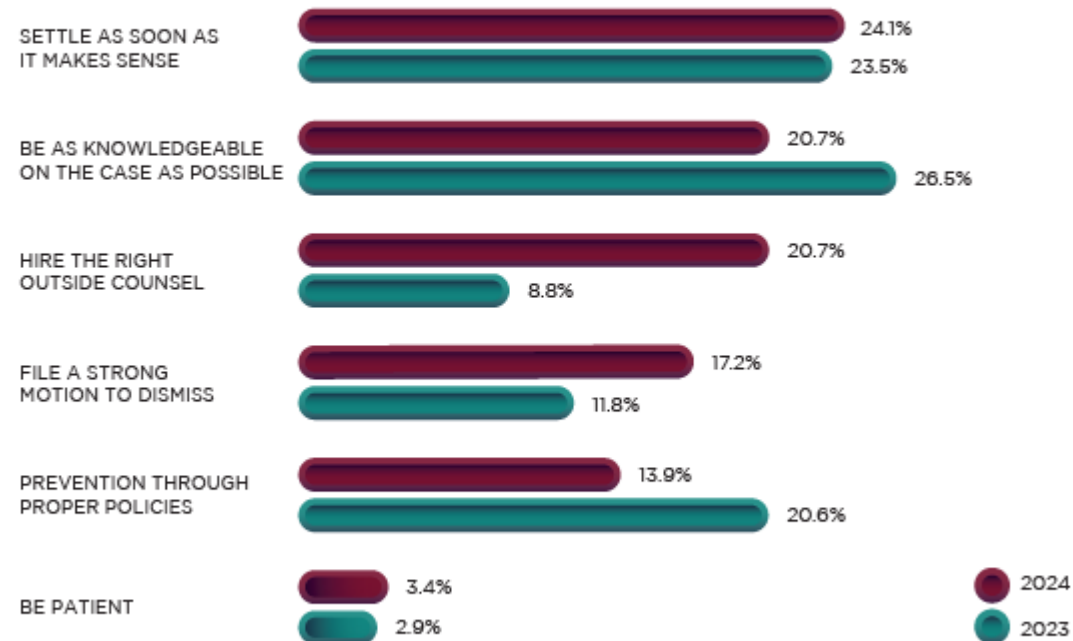
- a. Taking an aggressive litigation stance
- b. A pragmatic approach to settlement
- c. Knowing your case inside and out
- d. Filing early motions to dismiss



b. A pragmatic approach to settlement

Nearly one in four companies, consistent year over year, believe that the unwritten secret to beating a class action is a pragmatic approach to settlement. Meanwhile, the preference for knowing your case inside and out as a key to success has declined, with only one in five companies prioritizing it this year, down from one in four last year. On the other hand, the importance of hiring the right outside counsel has more than doubled, rising to 20.7% of corporate counsel from 8.8% last year. This shift underscores the growing need for selectivity and the camaraderie that develops during longer-term class actions, which companies report are increasingly persisting in their portfolios from year to year.

The Unwritten Secret to Beating a Class Action
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What factors are driving nearly three in five companies to expect complex legal actions to become more complex?

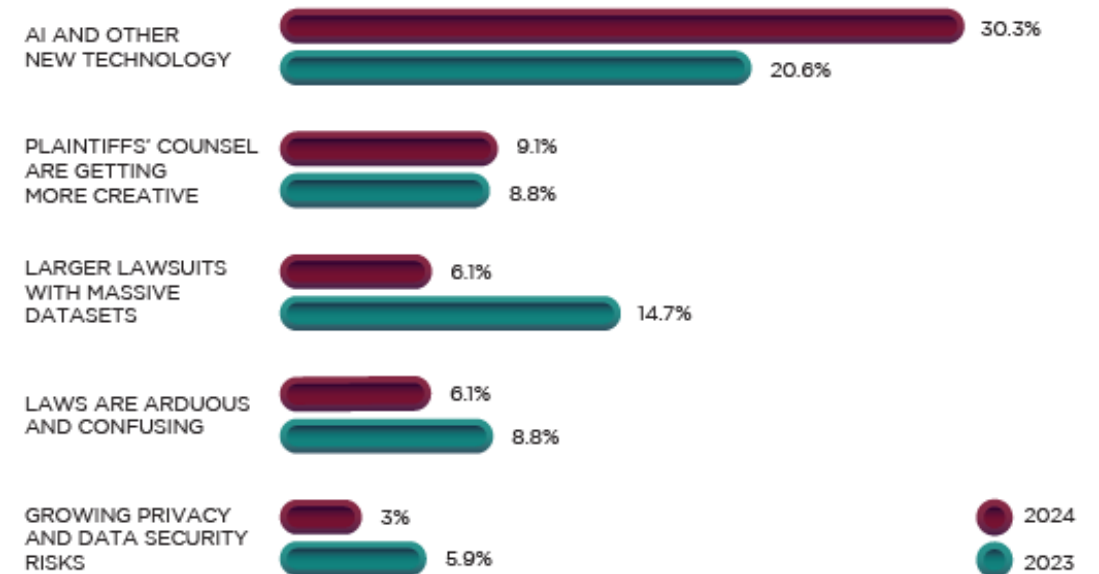
- a. Increased regulatory oversight and global litigation
- b. AI, new technologies, and data-related issues
- c. Larger lawsuits involving massive datasets
- d. Expanded use of arbitration agreements



b. AI, new technologies, and data related issues

Nearly three in five companies expect class actions to become more complex. AI, new technologies, and data-related issues are significant factors contributing to this increased complexity. Larger claims involving massive datasets are less of a concern than they were last year, due to increased familiarity with the use of advanced analytical tools.

Why Class Actions Will Become More Complex
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The percentage of companies using alternative fee arrangements for class actions has declined over the past four years.

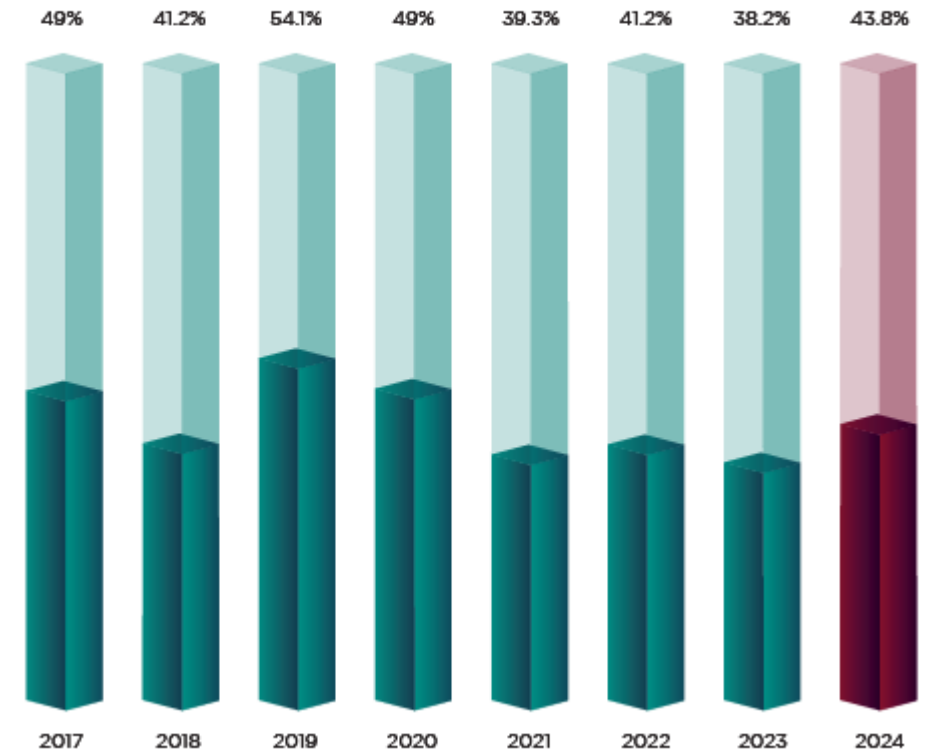
- a. True
- b. False



b. False

More than four out of 10 companies are using alternative fee arrangements (AFAs) in class actions, showing an uptick over the past four years. Given the growing complexity of these class actions, this is a substantial figure that indicates in-house attorneys are taking the time to find the fee model that aligns with the value their company places on the litigation.

Alternative Fee Arrangement Use in Class Actions
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Which Supreme Court Justice cited Carlton Fields' Class Action Survey in a Supreme Court Opinion?

- a. John Roberts
- b. Ruth Bader Ginsburg
- c. Sonia Sotomayor
- d. Amy Coney Barrett



b. Ruth Bader Ginsburg

The survey was cited by Justice Ginsburg's dissent in *Epic Systems Corp. v. Lewis*, in which the Supreme Court upheld the use of class action waivers in employee arbitration agreements.

¹²In *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003), a plurality suggested arbitration might proceed on a class basis where not expressly precluded by an agreement. After *Bazzle*, companies increasingly placed explicit collective-litigation waivers in consumer and employee arbitration agreements. See Gilles, *Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action*, 104 Mich. L. Rev. 373, 409–410 (2005). In *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), and *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228 (2013), the Court held enforceable class-action waivers in the arbitration agreements at issue in those cases. No surprise, the number of companies incorporating express class-action waivers in consumer and employee arbitration agreements spiked. See 2017 Carlton Fields Class Action Survey: Best Practices in Reducing Cost and Managing Risk in Class Action Litigation 29 (2017), available at <https://www.classactionsurvey.com/pdf/2017-class-action-survey.pdf> (reporting that 16.1% of surveyed companies' arbitration agreements expressly precluded class actions in 2012, but 30.2% did so in 2016).



KEY TRENDS AND TAKEAWAYS



Key Trends



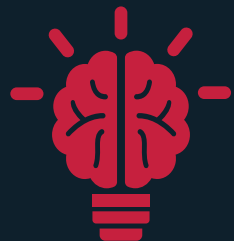
Defense Spending and Expected Number of Class Actions Hits New Record — 10th Straight Year of Growth



In-House Counsel Add One More Dedicated Day to Manage Class Actions



Complexity Growing in New Class Action Claims



Two-Thirds of Corporate Counsel Expect New Class Actions to Arise From Use of Generative AI



Labor & Employment and Consumer Fraud Expected to Lead Next Wave of Class Actions



More Companies Facing Class Actions Next Year Than Ever Before

In Their Own Words

CORPORATE COUNSEL ON THEIR APPROACH TO MANAGING NEW CLASS ACTIONS

“

If we have insight into a class, we work with our business teams to try to avoid the claim or to limit any potential exposure. We can also make changes to ensure it doesn't become a bigger issue.

*– Associate General Counsel, Global Litigation
Fortune 500 Consumer Goods Company*

We just installed new software that will help us track employee activity when taking breaks, which should help us monitor wage and hour cases. So we try to be proactive in risk prevention.

*– Director and Senior Counsel,
Employment and Litigation
Prominent Consumer Goods Company*

We stay on top of trends in our industry. We also search for a good stable of law firms that we know we can draw on for our class action cases anywhere in the U.S.

*– Senior Assistant, General Counsel
Large Insurance Company*

We do internal research and check on compliance. We watch trends and audit the systems we have in place and make changes as needed.

*– Associate General Counsel, Labor & Employment
Fortune 500 Transportation Company*

We conduct a regular review of cases filed against other similar companies and we stay close to trends in the class action space.

*– Assistant General Counsel
Fortune 500 Insurance Company*

Our outside counsel is very experienced in the consumer class action arena, and they make us aware of any potential class actions. In some cases, we have been able to come to early resolutions before they become class actions.

*– General Counsel, Litigation
Prominent Professional Services Company*

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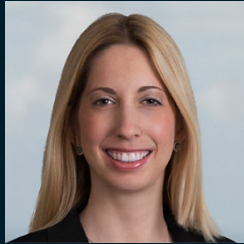


Q&A





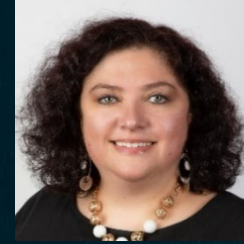
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