

Rise in Class Action Defense Spending Continues for Third Consecutive Year

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The seventh annual Carlton Fields Class Action Survey confirms that class action defense spending continues to rise – and, in fact, has reached its highest level since 2010. It was the third consecutive annual rise in spending after steadily decreasing expenditures from 2011 to 2014. The upward trend is expected to continue as companies across multiple industries spent \$2.24 billion defending class action lawsuits in 2017, with spending projected to reach a high of \$2.39 billion in 2018. Survey respondents reported their average spend per class action increased substantially over the past two years, even as the overall number of class action cases per company remained consistent. These and other results of the 2018 Carlton Fields Class Action Survey were compiled from 411 interviews with general counsel, chief legal officers, and direct reports to general counsel at 385 companies in multiple industries. The number of companies managing class action cases rose to 59 percent in 2017 up from 53.8 percent in 2016. Likewise, the overall risk faced by respondent companies increased. The combined volume of bet-the-company and high-risk matters ticked up to 26.2 percent in 2017. “We see evidence of steadily increasing volume and complexity,” said Julianna McCabe, director of Carlton Fields’ Class Action Survey and chair of the firm’s National Class Actions practice group. “Defending class action litigation is indeed an ongoing challenge for most American companies, testing corporate resolve and straining corporate resources.” This year’s survey found that labor and employment (particularly, wage and hour litigation), consumer fraud, product liability, and antitrust matters collectively accounted for two-thirds of class action spending by respondents, with data privacy and security matters lurking as a potential next wave in 2018. Internet-connected products, such as medical devices and home appliances, are one significant source of concern associated with potential data breach litigation in the near future. Among additional findings:

- Despite a reduction in pending labor and employment cases compared to 2016, these matters continued to represent the highest percentage of class actions, accounting for 24.7 percent of all matters and 21.6 percent of all spending. Notably, 40 percent of companies identified wage-and-hour litigation as their greatest employment related class action threat.

- Outside counsel played a critical role in early case assessment for the fourth consecutive year, while the number of in-house lawyers assigned to manage class actions did not increase. Nearly 80 percent of companies described outside counsel's role in early case assessment as "essential" or "substantial," up from 73 percent in 2016.
- As the number of class actions continued to rise, the use of alternative fee arrangements (AFAs) increased in 2017. Forty-nine percent of companies reported using AFAs, up from 35.8 percent in 2016. Fixed fees remained the most prevalent type of AFA among companies using them. But companies reported increased use of every other type of AFA from 2016 to 2017.
- Most companies reported that the current political climate in Washington, D.C. has had no immediate impact on their management of class actions. Conversely, 11 percent of companies reported that the political climate impacted regulatory oversight and involvement related to their business.

The Carlton Fields Class Action Survey is widely recognized as a powerful resource for in-house counsel who want to manage class actions effectively and efficiently. Participating companies in the 2018 survey had average annual revenue of \$13.9 billion and median annual revenue of \$5.9 billion. The surveyed companies operate in more than 25 industries, including banking and financial services, consumer goods, energy, high tech, insurance, manufacturing, pharmaceuticals, professional services, and retail. [DOWNLOAD THE REPORT NOW TO LEARN MORE](#). Read the [Carlton Fields Class Action Blog](#).

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