

# U.S. Class Action Spending Reaches New High of \$2.9B; Companies Report Spike in Volume and Complexity of Matters, Survey Says

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*10th Anniversary Carlton Fields Class Action Survey Details Recent Developments and Best Practices in Class Action Management* The 10th anniversary edition of the Carlton Fields Class Action Survey reveals that U.S. class action spending is growing at more than twice the rate of other litigation spending, reaching a new high of \$2.9 billion in 2020. The number of companies facing class actions is the highest in a decade, and corporate counsel report an increasing number of complex class action matters. The class action landscape has changed significantly since Carlton Fields' annual Class Action Survey launched a decade ago. The number of ongoing class actions managed by survey respondents has more than doubled to 9.3 matters per company in 2020, compared to 4.4 matters per company in 2011. Class action matters have become increasingly high-risk for corporations. In 2020, companies reported that 34.3% of the class actions they faced were high-risk or bet-the-company, up from only 4.5% reported in 2011. Class action spending has increased for six consecutive years, and companies project that spending will hit nearly \$3.3 billion in 2021 – another new record. “With the pandemic, we’ve seen a groundswell of new litigation, and even those companies who have not yet faced a COVID-19 class action have considered or adopted new business practices in an attempt to address related issues and minimize risk,” said Carlton Fields’ National Class Actions Practice Group Chair Julianna Thomas McCabe, who also oversees the Class Action Survey with Shareholder Michael N. Wolgin. Added Wolgin, “Companies facing class actions seek partnerships with trusted outside counsel who have a deep understanding of their products and services. They also want their outside counsel to have an appreciation for their risk tolerance and how class actions affect their business goals and bottom line.” Additional key findings

## include: **COVID-19 Is a Major Factor in Class Action Spending**

- In 2020, more than 25% of companies surveyed had already faced at least one class action as a result of the coronavirus pandemic. By April 2021, more than 1,600 COVID-19-related class actions were filed.
- The three largest categories of COVID-19 class actions relate to insurance coverage for business interruption; higher education refunds; and demands for entertainment, ticket, and travel refunds.
- Sixty percent of companies changed one or more business practices during the pandemic to limit class action risk. In-house counsel for an industrial manufacturer said: “We’ve had to change the entire health and safety landscape to mitigate risk to employees. On the data side, we’ve had to create protocols and training for employees using personal computers to work remotely.”

## **Top Class Action Area is Still Labor and Employment; Data Privacy Statutes are Projected to Bring the Next Wave**

- Labor and employment matters are the leading category of class actions, accounting for 22.5% of matters and 22.7% of spending. Consumer fraud follows closely at 21.1% of matters and 20.1% of spending.
- Companies predict data privacy and cybersecurity matters as the greatest future class action threat. Corporate counsel’s high level of concern about data privacy lawsuits is based on recently enacted or forthcoming state privacy statutes such as the California Consumer Privacy Act.
- In-house counsel for a life insurance company predicted: “We are just beginning to see the tip of the iceberg with privacy class actions.”

## **Companies Strategically Manage Class Actions in Partnership with Outside Counsel**

- Companies recognize four highly effective tools to reduce class action defense costs: the close supervision of budgets, early case assessment, maintaining a relationship with trusted outside counsel, and bundling class action matters with one or more law firms.
- Seventy-eight percent of companies now report that they include mandatory arbitration clauses in their contracts, the highest percentage since the inception of the survey. Companies also reported an increase in use of arbitration clauses with class action waivers – 74.4% up from 55% reported last year.
- For the second consecutive year, settlement rates for class actions declined and were down to 58.5% in 2020.

The 2021 Carlton Fields Class Action Survey is based on interviews with general counsel or senior legal officers at more than 400 *Fortune* 1000 and other large companies. The Class Action Survey is widely recognized as a powerful resource for in-house counsel who want to manage class actions effectively and efficiently. Surveyed companies had an average annual revenue of \$23.4 billion and median annual revenue of \$7.1 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.

To download the 2021 Carlton Fields Class Action Survey, please visit <https://ClassActionSurvey.com>.

Read the [Carlton Fields Class Action Blog](#).

## Featuring



Julianna Thomas McCabe



Michael N. Wolgin