

U.S. Corporate Class Action Defense Spend Exceeds Projections, Survey Says

July 07, 2020

2020 Carlton Fields Class Action Survey Predicts Further Increases in Matters and Spending in 2020, an Expectation Now Shared by 70% of Corporate Legal Decision-Makers Due to COVID-19

The ninth annual Carlton Fields Class Action Survey reveals a spike in class action filings related to COVID-19, with a majority of companies expecting the volume of class actions to continue to increase as a result of the pandemic. By the end of May 2020, more than 560 COVID-19 class action matters were filed across a wide variety of industries, with continued growth on a daily basis.

Class action spending has now increased for five consecutive years — a trend observed even before the onset of the pandemic. Companies are handling a higher volume of class action matters than ever before, with complex and high-risk matters making up the bulk of existing cases.

“The unprecedented COVID-19 health and economic crisis has resulted in immediate and lasting changes to business practices nationwide,” said Julianna Thomas McCabe, director of Carlton Fields’ Class Action Survey and chair of the firm’s National Class Actions Practice. “The stakes continue to be high. In-house legal departments should have their action plans in place to preempt and defend against class actions. It is critical to analyze changes in business practices caused by COVID-19 and to adhere to existing best practices and regulatory compliance.”

When asked about class action defense strategies, one general counsel survey respondent commented: “You have to do a proper risk assessment. If you miss a big risk or misidentify something as a bigger risk than it is, you are not properly allocating resources.”

The 2020 Carlton Fields Class Action Survey is based on interviews with general counsel, chief legal officers, and direct reports to general counsel at more than 400 *Fortune* 1000 and other large

companies across a variety of industries.

Labor and employment continues to account for more than 25% of class action matters and spending. Cases and spending in the consumer fraud category, on the other hand, are down 8 percentage points from 2018.

The percentage of companies predicting data privacy and security as the next wave of class actions increased from 54.3% to 58.2%, with companies expressing concern about new and anticipated state privacy legislation. More than three-fourths of companies reported concern about the California Consumer Privacy Act (CCPA), a data privacy law that went into effect in January 2020. The percentage of companies concerned about exposure resulting from the European Union's privacy regulation (the GDPR) increased by one-third.

Among additional key findings:

- Insurance class actions rose to 10.7% of matters and 14% of spending.
- Companies report that contractor misclassification and employee data privacy class actions have emerged as new labor and employment concerns.
- The percentage of companies facing class actions categorized as lower exposure matters increased by nearly 10 percentage points in 2019, while the percentage of companies facing complex, high-risk, or bet-the-company class actions declined.
- Companies increased their use of contractual arbitration clauses in 2019, and the percentage of companies that included class action waivers in their arbitration agreements increased to 55%.
- Companies identified and elaborated on five important sources of innovation for class action management: aggressiveness, strategic planning, immediate case evaluation, scenario planning, and the implementation of thoughtful cost management strategies.

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 2020 Class Action Survey have an average annual revenue of \$21.8 billion and median annual revenue of \$6.7 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 2020 Carlton Fields Class Action Survey, please visit <https://ClassActionSurvey.com>.

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

Featuring



Julianna Thomas McCabe



Michael N. Wolgin