

# More Product Liability and Antitrust Class Actions, Rising Class Action Spending Among Trends in Latest Class Action Survey

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The seventh annual Carlton Fields Class Action Survey, released April 24, reveals important issues and trends related to class action matters and management based on interviews with general counsel or senior legal officers at 385 companies of all sizes and business types. The survey, which can be viewed at [www.ClassActionSurvey.com](http://www.ClassActionSurvey.com), reflects their thoughts about class action exposure and best practices for class action management. Among the survey's findings: Class action spending has been on the rise annually since 2015, after a downward trend that occurred between 2011 and 2014. Across industries, companies spent \$2.24 billion on class action lawsuits in 2017. The number of companies facing class actions climbed to 59 percent, up from 53.8 percent in 2016. Companies reported that the magnitude of potential exposure and risk also rose. While the average volume of class actions per company increased slightly, from 5.9 in 2016 to 6.3 in 2017, a more significant jump in class action matters per company is anticipated in 2018. Labor and employment matters remained the most common type of class actions companies faced in 2017. They accounted for 24.7 percent of matters, and 21.6 percent of spending. Consumer fraud matters remained the second most prevalent category of class actions, comprising 18.2 percent of matters and 18.9 percent of spending. There was a sharp rise in product liability and antitrust matters, which ranked third and fourth, respectively. Together, these four segments accounted for two-thirds of class action spending. While companies continue to view data privacy class actions as a threat, fewer than one quarter have actually faced a data privacy class action. Sixty-eight percent of companies report facing one or more class actions on an ongoing basis, a number that has been fairly consistent for several years. For the first time this year, we report on the intersection between regulatory

proceedings and class actions. Over 70 percent of companies report having faced regulatory proceedings and class actions concurrently. The volume of bet-the-company and high-risk class action matters per company increased from 25.3 percent in 2016, to 26.2 percent in 2017. While the percentage of companies that faced a bet-the-company class action dipped slightly, from 16.7 to 13.9 percent, those companies facing high-risk matters increased from 37.5 percent in 2016 to 42.6 percent in 2017. Although risk and exposure continued to rise, the number of in-house lawyers assigned to manage class actions has not increased. On average, companies dedicate 3.2 full time attorneys to handle class action litigation, and the amount of time those attorneys spend each week on the management of class actions increased for the fourth consecutive year. Fewer companies made a single individual accountable for their class action outcomes. Only 51.6 percent of companies, down from 62.2 percent in 2016, reported that they made a single individual accountable. More than 58 percent of companies, up from 46.2 percent in 2016, described outside counsel's role in early case assessment as "essential." When evaluating the risks presented by class actions, exposure was still deemed the most important variable, and companies reported a rise in the importance of applicable case law as compared to other risk variables. Class action settlement rates increased from 62.5 to 70.8 percent. While most cases settled at the pre-certification stage, 37.5 percent settled following certification, up from 23.4 percent in 2016. "Coming in under estimated exposure" displaced damages as the key determinant of success. Companies are cautiously optimistic about the impact of future Supreme Court rulings on class action risk for businesses, with 32.1 percent reporting that they expect any changes in the composition of the Court to be favorable. Most companies report, however, that the political climate in Washington, D.C., in general, does not impact their defense of class actions. After the use of class action waivers in arbitration clauses dropped to 30.2 percent in 2016, more companies, 37.2 percent, reported using these clauses in 2017. As the number of class actions managed continued to rise, companies also returned to alternative fee arrangements, seeking budget predictability and efficiency. Forty-nine percent of companies reported using AFAs, up from 35.8 percent in 2016 and down just slightly from 49.2 percent in 2015. Within companies using AFAs, fixed fees remained the most prevalent type, although the percentage of companies using them dropped from 78.9 to 71.7 percent. In addition, phased fee arrangements, where work is assessed and billed by a portion or segment of the class action process, continued to become more common. Forty percent of companies reported using

phased fees, up from 30.2 percent in 2016. [View the 2018 Class Action Survey](#)



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