



2020

**CARLTON FIELDS
CLASS ACTION
SURVEY**

**BEST PRACTICES
IN REDUCING
COST AND
MANAGING RISK
IN CLASS ACTION
LITIGATION**

**CARLTON
FIELDS**

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Introduction

As we head to print on the ninth annual Carlton Fields Class Action Survey, the unprecedented COVID-19 health and related economic crisis has wrought permanent change to business practices worldwide. There is little doubt that litigation management and, as relevant to this publication, the management and risk reduction strategies for classwide litigation will also change. Already, corporate America faces a rising tide of more than 500 new class action matters stemming from the coronavirus outbreak, and as the country cautiously takes steps to reopen, new risks emerge. We hope that this year's survey serves as a resource while you navigate these changes. As in past years, this report provides an overview of important issues and practices related to class action matters and management. It summarizes historical trends captured since the inception of the survey and includes information related to emerging issues in class action litigation.

Even before the recent spike in class action filings related to the pandemic, corporations reported yet another annual increase in class action spending. Spending has increased for five consecutive years, and it likely will continue to rise in 2020. Companies are also 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 2020 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 across a variety of industries. We thank you for taking the time to review our report, and trust you will find valuable information that helps your company and its legal department manage these prevalent, costly lawsuits both effectively and efficiently.

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Executive Summary

In 2020, class action spending rose 24% again, reaching \$1.64 billion. The average number of matters per company increased from 1.8 in 2018 to 20.2 in 2020. Before the COVID-19 pandemic, companies reported that spending and matters were expected to increase again in 2020. In the second quarter of 2020, that expectation has become a reality. Facing a rash of new matters, 75 percent of respondents

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The percentage of companies being hit by the company cases declined to 20.8 percent, its lowest level since 2015. Insurance coverage for class litigation decreased this year, with only 22.2 percent of companies reporting that some portion of their class action defense costs were covered by insurance. Companies carrying insurance reported that higher deductibles and various exclusions limited coverage. With respect to staffing, an uptick in in-house resources reported in last year's survey was partially reversed this year as companies reported going from an average of 8.5 to 8.2 in-house lawyers dedicated to class action defense. These attorneys spend an average of 12 hours per week managing class actions.

In weighing the variables they consider most important in evaluating class action risk, companies ranked exposure as 8.2 on a 1 to 10 scale of importance. That year-over-year comparison has consistently ranked exposure as having the highest level of importance over other risk factors. Assessing the risks early was a theme that resurfaced throughout this year's survey, with