

Second Annual Litigation Trends Survey *Findings*



When Complexity Demands Perspective, Think Fulbright.™



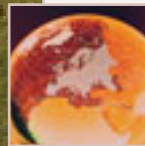
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FULBRIGHT
& *Jaworski* L.L.P.
Attorneys at Law

Litigation has become an inevitable part of the modern corporation. Nearly 90% of US corporations are engaged in some type of litigation, and the average company balances a docket of 37 lawsuits. For \$1 billion-plus companies, the average number of cases being juggled in the US soars to more than 140. And as the caseloads mount, so grows the concern over the management of corporate litigation.

IMPORTANT *Insights*

One of the Largest Surveys on Litigation Trends

For the second year in a row, Fulbright & Jaworski commissioned an independent survey of corporate General Counsel, in both the US and UK, regarding a wide range of litigation trends. The 354 conducted interviews, including 50 participants in the United Kingdom, again made this a statistically significant survey sample and likely the largest survey of corporate litigation trends ever conducted.

The findings were compared in several ways, including US to UK respondents, company revenues, industries and US geographic regions. The results achieved are presented in an informative and, hopefully, helpful manner designed to assist corporate counsel in responding to foreseeable trends in the industry.

For further breakdowns of information by industry or region, or to request additional data or analyses of specific topics, please contact Fulbright & Jaworski at litigationtrends@fulbright.com.

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Bar and Pie Chart Legend

- US Stat
- UK Stat
- Combined US and UK

A VIEW
Inside

A corporation with \$1.5 billion in revenues averages more than \$8 million per year in corporate litigation costs.

The Fulbright & Jaworski 2005 Litigation Trends Survey took an in-depth look into the evolving challenges of corporate litigation. Included were major topics from the 2004 survey and some new ones suggested by last year's respondents. Among them: how General Counsel measure success for legal departments, how they implement litigation hold policies and how they manage class actions and international arbitration.

"The value of a broad survey of corporate counsel is that it gives the legal community an opportunity to step back from the trenches and tap into the mindset of corporate America, for whom litigation can play a key role in an overall business strategy," said Stephen C. Dillard, head of Fulbright's worldwide litigation practice.

Here's a sampling of some of the issues that were top of mind.

Newest Litigation Headache — Electronic discovery was the number one new litigation-related issue for companies with revenues over \$100 million.

Who Swings First — 74% of the largest companies surveyed and 32% of smaller companies initiated suits in the last year.

***Juggling Act** — The average \$1 billion-per-year company faces **more than 140 cases** in the US at one time.*

***Majority (Arbitration) Rules** — **Two-thirds** of American corporate counsel prefer AAA/ICDR rules for international arbitration agreements.*

***“Help Me Control Costs!”** — The issue General Counsel want their outside counsel to understand the most is **cost control**.*

***Class Inaction** — **69%** of US counsel polled predict the Class Action Fairness Act of 2005 will have **no impact on the liability** their company faces.*

Personal injury and product liability rose significantly, although contracts and labor/employment remained the most active litigation areas.

SURVEY *Details*

The median size for US companies was \$484 million in gross revenues, and the median size for UK companies was \$833 million.

A View from the Top

Of the 2005 Fulbright & Jaworski Litigation Trends Survey respondents, more than 90% held the title of General Counsel, Legal Director or other senior-level attorney position in the US and UK. The survey responses are divided into three groups to reflect more accurately the effect of company size on the data.

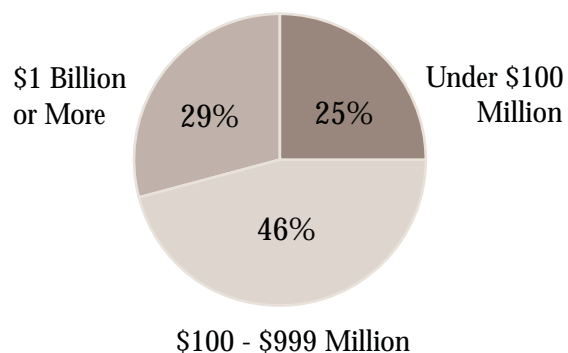
Small Companies *Less than \$100 million gross revenues*

Mid-sized Companies *\$100 million to \$999 million gross revenues*

Large Companies *\$1 billion or more gross revenues*

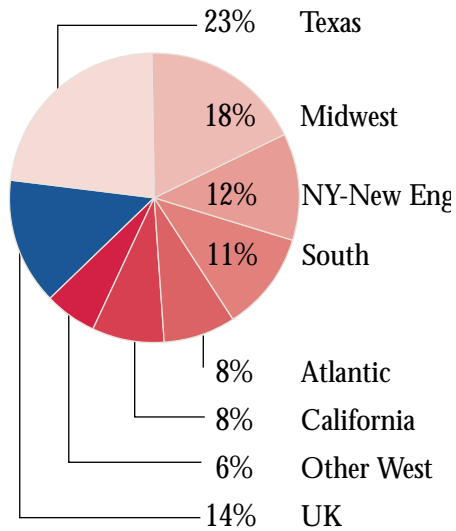
Publicly held companies comprised 40% of the sample. Of those, 59% are listed on the New York Stock Exchange, 22% on NASDAQ and 11% on the London Stock Exchange. Of the companies with \$1 billion or more in revenues, 70% are publicly held, and 17% of the total sample are nonprofit organizations.

Total Sample by Company Revenues



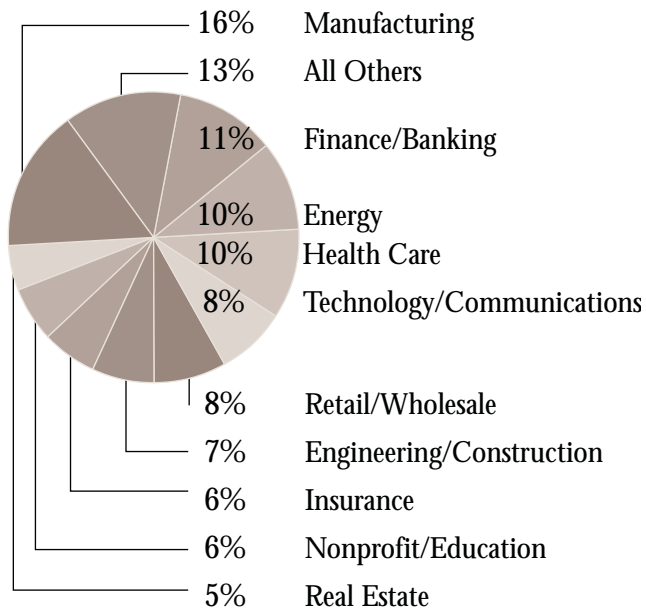
The survey results are divided by region, with the majority of respondents hailing from the US.

Location of All Respondents



The total sample included a broad range of industries. More than half of the UK participants represented manufacturing, finance or technology/communications, while the US participants represented a broader array of industries.

Total Sample Industry Representation



LITIGATION *Exposure*

A More Acute Case for Personal Injury

Last year, respondents ranked litigation areas of greatest concern to them. This year, they identified the areas with the most matters pending. The top two slots on in-house litigation dockets are reported to be contracts claims and labor/employment matters, accounting for up to half of litigation expenses for large to mid-market companies. On the rise, personal injury cases ranked number three in matters pending this year after not making the list of top concerns in 2004.

Of all the litigation areas that respondents mentioned, only insurance and regulatory matters showed significant percentage increases in pending matters in 2005. Although class actions were one of last year's top five concerns, they were not in the five most active areas of litigation this year. Rounding out the five most active litigation areas in 2005 were IP/patents and product liability cases, although their percentages were well below those in the 2004 list of concerns.

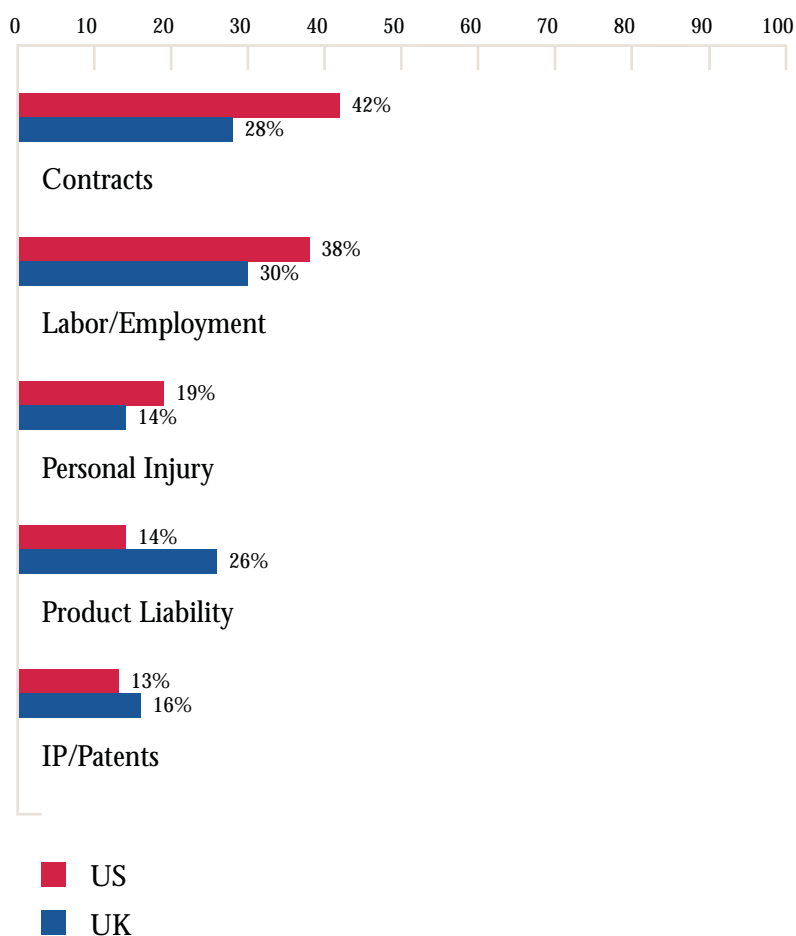
Growing Concerns

The five litigation types with the greatest number of pending matters were also the ones with the greatest increase in risk from previous years and those of greatest concern in the future. Labor/employment was much more of a concern in the US than in the UK, while product liability emerged as a growing concern in the UK.



As expected, the types of future litigation that most concerned various industries varied significantly. For example, class actions concerned the insurance and manufacturing industries the most, while labor/employment issues matched IP/patents among technology/communications companies.

Percentage of Most Numerous Types of Litigation Last Year



E-merging Burdens: Electronic Discovery and Regulatory Compliance

Of the current litigation-related burdens that did not exist two or three years ago, electronic discovery was mentioned most often. So far, its impact appears to have been felt far less in the UK than in the US. For smaller companies, complying with increased regulation was their largest growing burden.

Fulbright is a leader in e-discovery counseling.

LITIGATION *Experience*



Hey, Is That a New Suit?

How much of corporate America's litigation docket is new this year? Two-thirds of the companies surveyed were served with a summons and complaint during the past year, a third were hit with between six to 20 suits, and 18% were hit with more than 21.

Big Business, Bigger Target

During the last year, companies with \$1 billion or more in revenues averaged more than 20 times the number of lawsuits compared to the smallest companies in the survey and nearly four times the average for mid-sized companies. Technology/communications companies were the most frequent subjects of arbitration filings followed by health care, insurance and manufacturing.

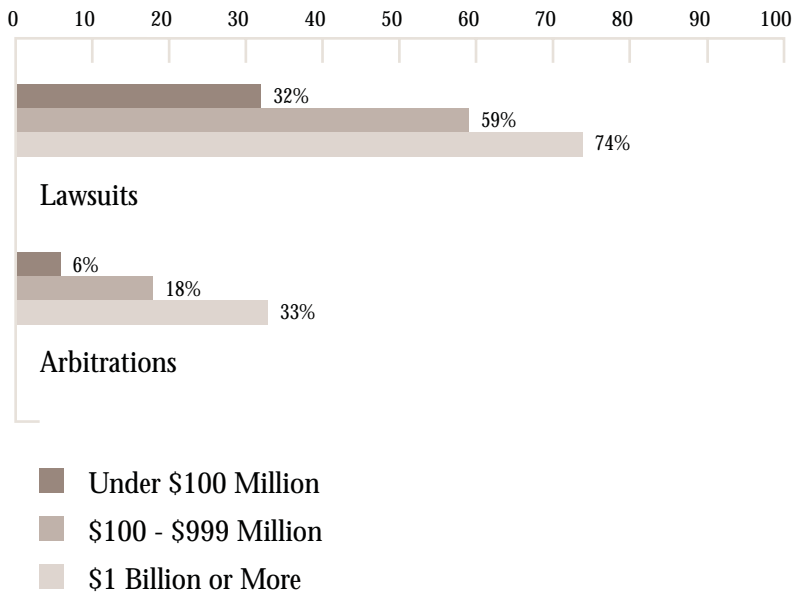
Energy Regulatory Proceedings: A Daily Reality

Energy was the only industry in which more than half of the companies surveyed had regulatory proceedings initiated or filed against them in the past year. The industries with the highest average number of proceedings were health care, manufacturing and energy.

US Companies Head to Court More Often

On average, in the last year, US companies filed two-and-a-half times the number of lawsuits that UK companies did. US companies also initiated eight times as many arbitrations as UK companies. Regardless of country or origin, the larger the company, the more likely it was to initiate a lawsuit or arbitration.

Percentage of Companies Initiating Actions



Small Companies Putting Up a Fight

Despite the fact that most matters are settled prior to trial or arbitration proceedings, 10% of all the survey participants reported that none of their matters are settled in advance, and 25% of the small companies settled none of their matters in advance. Conversely, very few large companies took all their matters to trial or arbitration (2%).

UK companies were more likely than US companies to settle all their matters before proceedings began (23% vs. 13%). This may reflect the effect of the Woolf Reforms in the UK, which impact proceedings before they even begin and encourage mediation to facilitate dispute settlement.

US regions where companies were most likely to proceed to trial or arbitration were the Atlantic (72% don't settle) and New York-New England (74% advance to trial or arbitration).



*“No client
has legal
problems.
They have
business
problems
with legal
issues.”*

*General Counsel
Mid-sized Hospital
in Seattle*

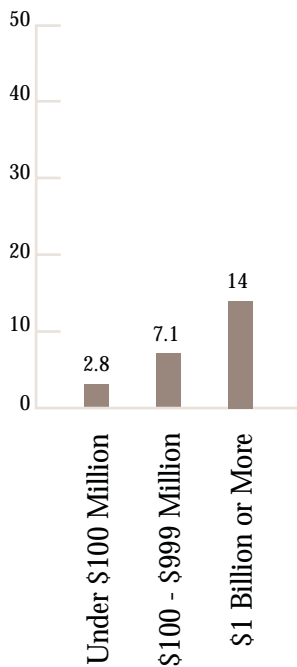
* LITIGATION EXPERIENCE

Opening Arguments: How Many Trials?

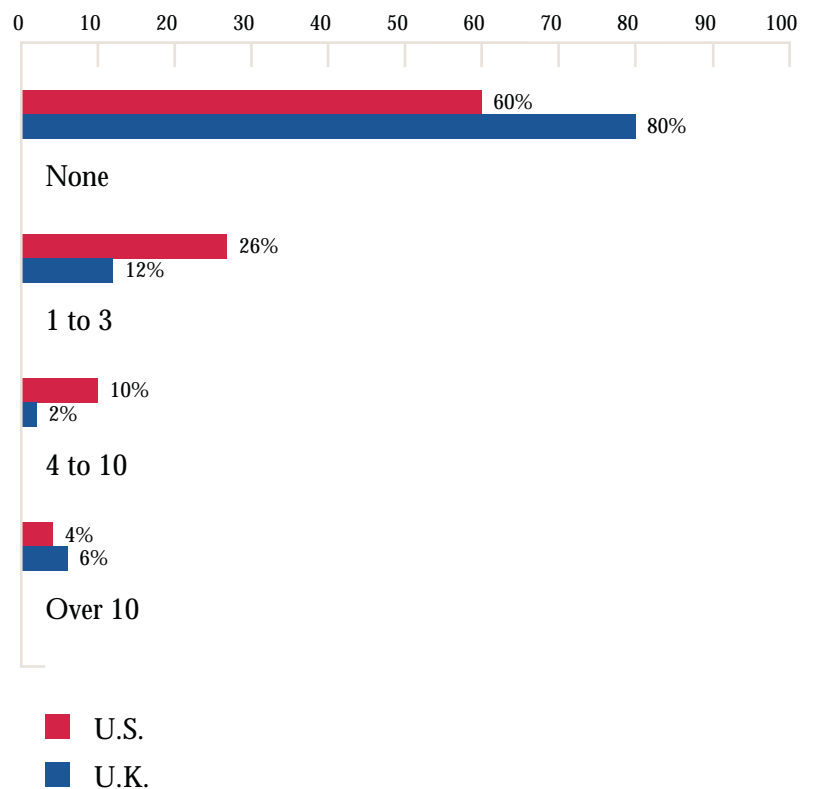
More than half the US companies surveyed had a trial last year, compared with only one-third of UK companies. Large companies were much more likely than mid-sized or smaller companies to have trials. Insurance and energy companies had the highest percentages of trials during the survey period, most likely a reflection of generally high caseloads.

In the US, of the matters that started trial, 40% went to verdict; in the UK, only 20% made it that far. Larger companies had an average of 10.7 cases go to verdict; finance led all industries by a wide margin in average number of verdicts, followed by technology/communications and energy.

Average Number of Matters in Trial or Arbitration in the Past Year



Percentage of Matters That Went to Verdict



Keeping Track of Time

Just 46% of all the companies surveyed ever tracked the time it takes to resolve matters, although UK companies were slightly more likely to do it.

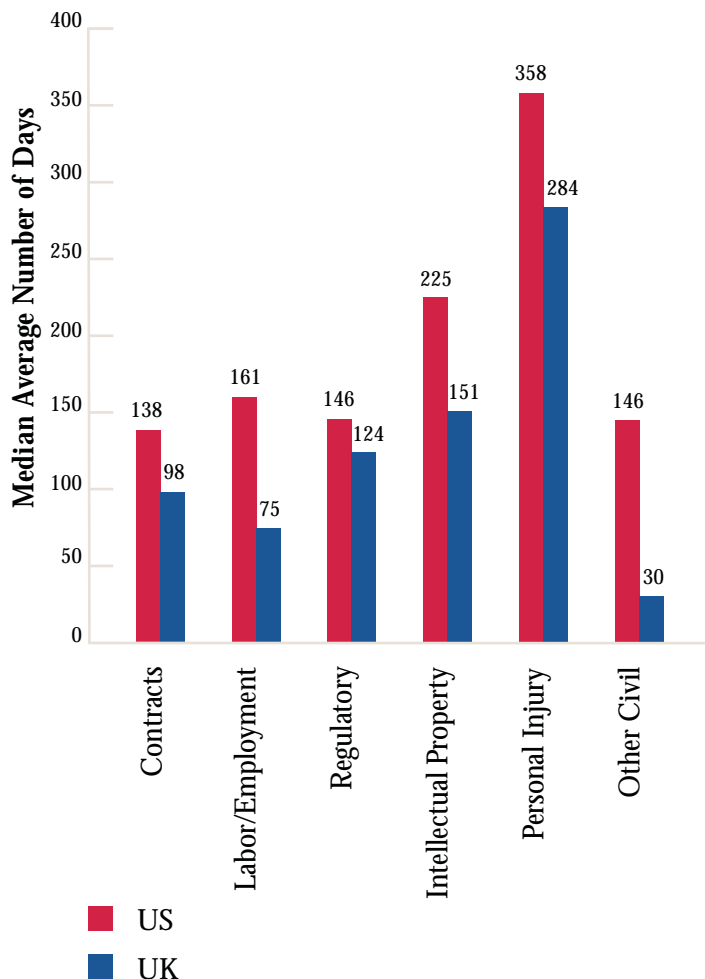
52% in the UK sometimes track time to resolution, 45% in the US

36% in the UK always track time to resolution, 20% in the US

Industries most likely to track time to resolution: manufacturing, energy and finance

When asked to estimate the average number of days to resolve matters in six litigation areas, the median estimates of US respondents were higher across the board than their counterparts in the UK, reflecting again the more litigious environment in the US.

Time-to-Resolution by Type of Matter



Nearly 90% of all US companies were engaged in some sort of litigation. Of the 10% that avoided business suits, the majority had revenues under \$100 million. However, 12% of \$1 billion-plus companies also reported being litigation-free—one of the survey's biggest surprises.



LITIGATION *Costs*



Winning Isn't the Only Game— Fees Matter Too

Respondents who track their legal costs and have an established legal budget most frequently answered that their budgets for all types of legal work averaged 1.34% of their companies' gross revenues. That figure goes a long way toward explaining corporate counsel's overriding concern about controlling litigation expenses. In fact, some respondents expressed more concern over the costs of litigation than they did over winning or losing lawsuits. Mid-sized companies appeared most concerned about it, which may reflect their point in the business growth cycle: large enough to be increasingly involved in litigation but not large enough to have a history of managing a large volume of litigation.

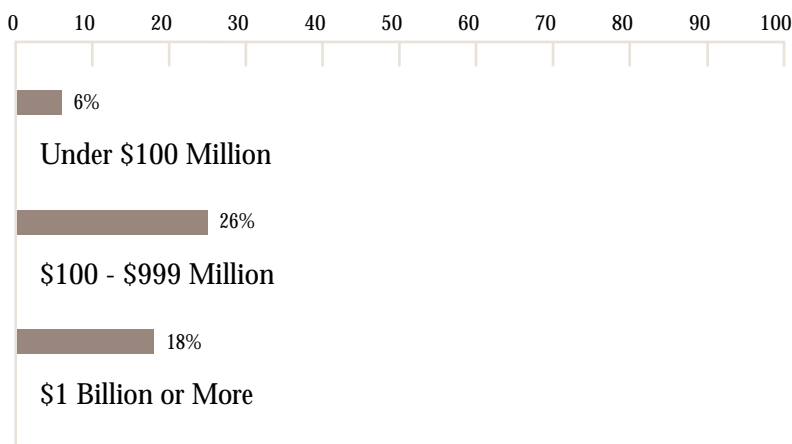
Despite the growing concern over costs, many corporate counsel are having a difficult time budgeting for litigation expenses. Even as companies have figured out how to predict spending for other strategic areas such as technology, sales, marketing and R&D, 43% of corporate counsel are still unable to predetermine the costs of managing business disputes, reporting that they could not quantify their litigation budgets in relation to their overall legal budget.



The findings also showed that:

- ✔ *Legal budgets of 2% or above were most prevalent in the real estate and technology/communications industries.*
- ✔ *10% of US companies had legal budgets of more than 5% of their gross revenues. No UK respondents were in that category.*
- ✔ *29% was the median amount of the total legal budget allotted for litigation.*
- ✔ *Cost was the single most cited concern about litigation, in general, far more than any specific type of litigation.*
- ✔ *56% of UK companies always required a budget from outside counsel versus 35% of their US counterparts.*
- ✔ *62% of all the survey respondents assign all their litigation to outside law firms.*

Cost as a Top Concern



PERSPECTIVE



PREDICTABILITY



EFFICIENCY



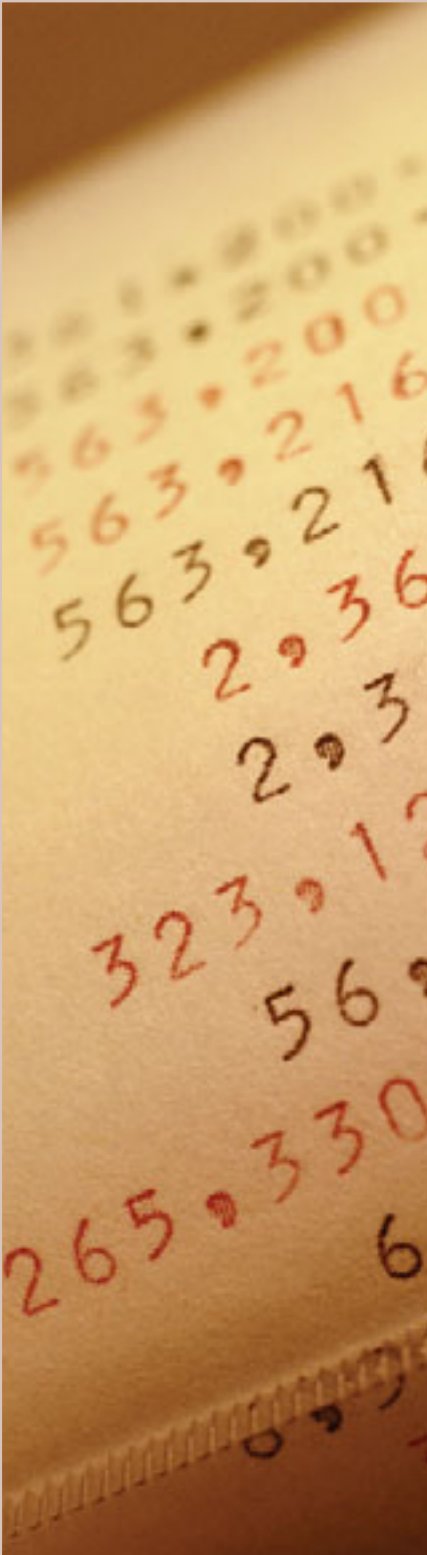
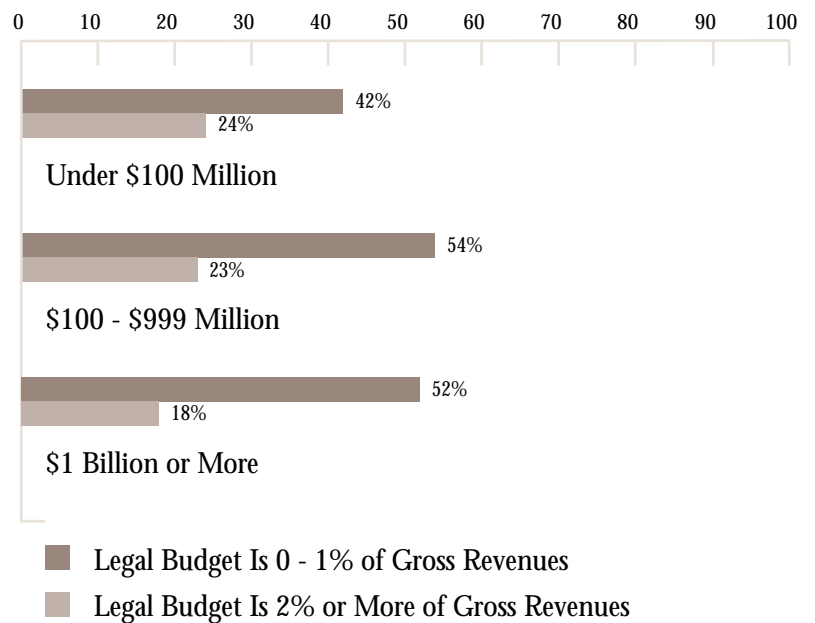
ACCOUNTABILITY

* LITIGATION COSTS

Budgeting Litigation Costs: Difficult to Estimate

Litigation may be seen as an inevitable cost of doing business, but those costs may not be predictable. Of those that tracked litigation as a percentage of the overall legal budget, the median was approximately 29%. Litigation was a significantly lower portion of legal costs in the UK, but for mid-sized and large companies across the entire sample, it comprised almost half of the entire legal budget. The highest litigation allocations were in the insurance and real estate industries.

*Legal Budget as a Percentage of Gross Revenues
Reported by Company Size*

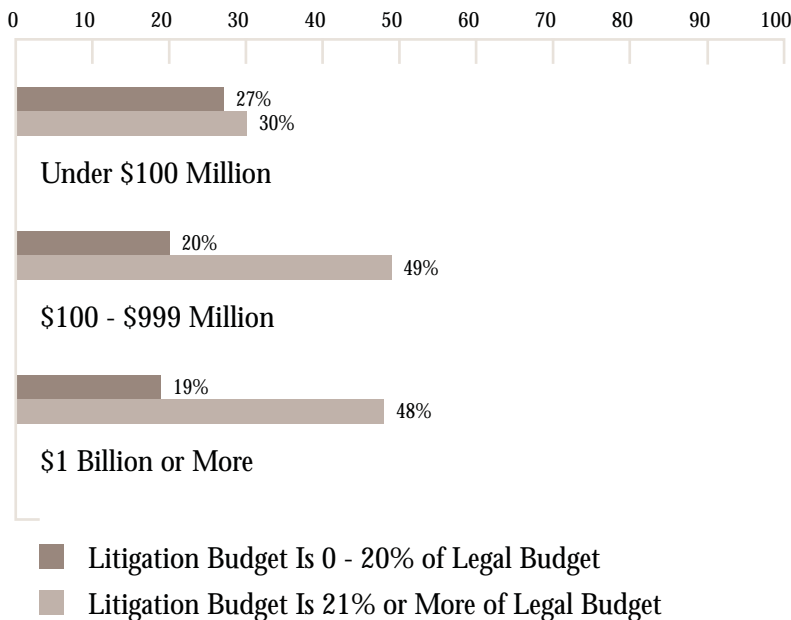


Keeping Outside Costs in Line

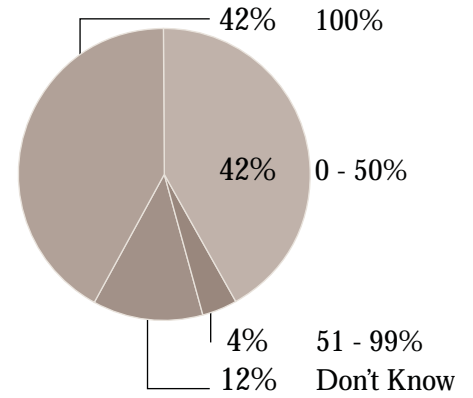
UK companies (56%) were more likely to always require a budget from outside counsel than their US counterparts (35%). Energy companies (45%), followed by manufacturing and technology/communications (42% each), led other industries in requiring budgets for all matters assigned outside.

In the 2004 survey, when asked about methods of controlling costs, respondents cited the use of national or regional counsel to handle all litigation of a certain type, success-based bonuses and various billing arrangements. Yet only about one-fourth used real-time tracking of costs vs. budgets, and of those, just 29% found the method effective for controlling costs.

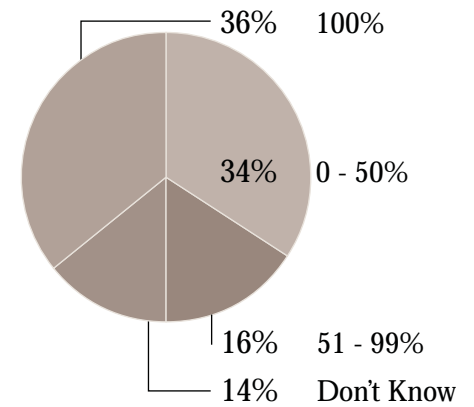
Litigation Budget as a Percentage of Legal Budget Reported by Company Size



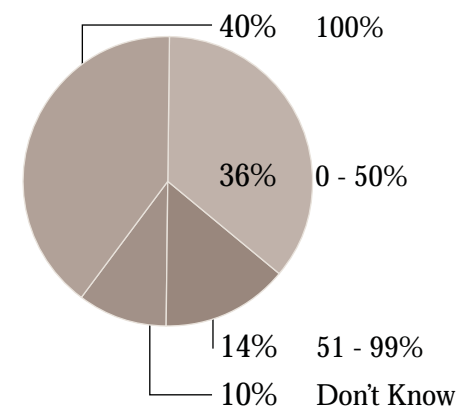
Percentage of Matters Where Budgets Are Required Under \$100 Million



Percentage of Matters Where Budgets Are Required \$100 - \$999 Million



Percentage of Matters Where Budgets Are Required \$1 Billion or More



* LITIGATION COSTS

Personal Injury and Employment Hurt More in US

In ranking six types of litigation matters, personal injury and employment matters were rated far less costly in the UK than in the US. Mid-sized companies rated intellectual property matters as their most expensive on average, while regulatory was the highest cost area on average for the largest companies.

By industry, manufacturing, energy, retail/wholesale and technology/communications companies all ranked IP litigation as the most expensive. Personal injury and regulatory matters were rated second and third by the energy industry.

Most Costly Types of Litigation by Industry

<i>Energy</i>	Intellectual Property
<i>Finance</i>	Employment
<i>Health Care</i>	Contracts
<i>Insurance</i>	Employment
<i>Manufacturing</i>	Intellectual Property
<i>Real Estate</i>	Personal Injury
<i>Retail/Wholesale</i>	Intellectual Property
<i>Technology/Communications</i>	Intellectual Property

MEASURING *Success*

How Do You Stack Up?

Respondents were asked how the success of the legal department is measured, as well as that of individual attorneys. Companies in both countries used results most often in evaluating the department as a whole, but differed after that in their lists of most important criteria. Avoiding trials was more important in the US. For more than half of US corporate counsel, a successful finish is more important than how fast they get there. Asked how their legal department's success is measured, more than 50% identified good results as the number one benchmark. Following in distant second and third places were cost-efficiency (36%) and avoiding trials (14%). Positive results was universally named as the top measure of success no matter what the company's size, but the bigger the company, the more important cost-efficiency seems to become.

How Management Measures Legal Department Success

- ✓ *Results: 52% in the US, 50% in the UK*
- ✓ *Cost-efficiency: 36% in the US, just 5% in the UK*
- ✓ *Meeting goals was listed twice as often in the UK as in the US*
- ✓ *In the UK, client feedback, avoiding trials and performance reviews also received more mentions than cost-efficiency*
- ✓ *Avoiding trials was more important in the US*

How Management Measures Corporate Attorney Success

- ✓ *Results: 38% in the US, 28% in the UK*
- ✓ *Cost-efficiency: 29% in the US, 3% in the UK*
- ✓ *Meeting goals: 39% in the UK, 16% in the US*
- ✓ *Client feedback: 11% in the UK, 7% in the US*

“It’s how well the legal department helps the company advance in its desired direction as well as implementing cost-effective solutions.”

Litigation Director
*\$1 Billion-plus
Information Technology
Company in Arizona*

“It’s how I perform my role as chief legal strategist to the board and the company, including protecting the assets and cost-effective delivery of appropriate legal services.”

General Counsel
Large Texas Manufacturer

“Keeping matters that go to litigation to a very low number, plus mentoring the next generation of lawyers and business leaders.”

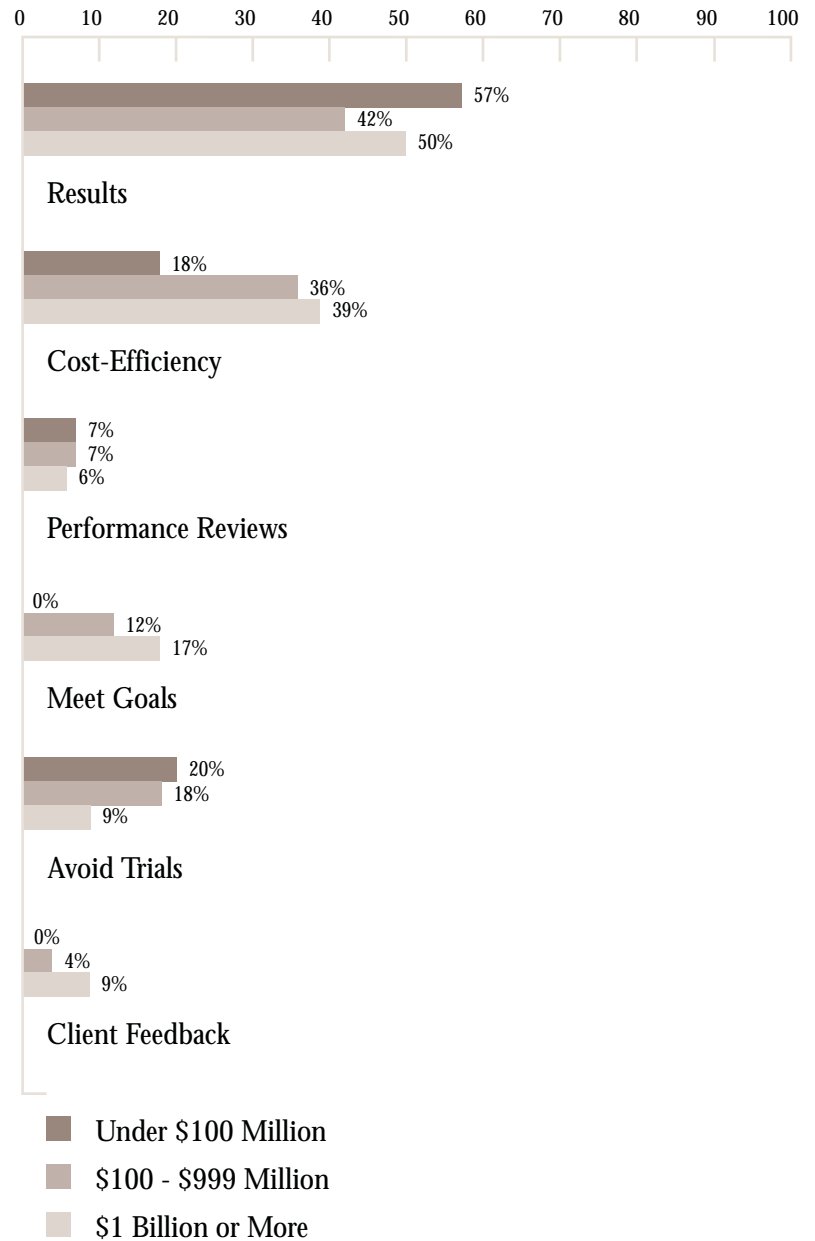
General Counsel
\$1 Billion-plus California
Financial Institution



* MEASURING SUCCESS

Small and mid-sized companies were more concerned with avoiding trials than large companies. Larger companies with more litigation emphasized cost efficiency more than smaller companies.

Top Measures of Legal Department Success by Company Size



LITIGATION *Management*

Who's Minding the Docket?

According to the survey, there are very few US companies that don't have in-house counsel dedicated to managing litigation. Only 8% of corporate law departments manage to get by without a staff lawyer managing company litigation matters, while 44% had at least one litigation corporate counsel. On average, smaller companies were the most likely to have only one in-house litigation manager; mid-market companies employ an average of three in-house attorneys to oversee outside litigators, while companies with revenues of \$1 billion-plus have an average of over 10 lawyers. The technology sector has the most corporate counsel who manage litigation, employing an average of nine attorneys in this role. The next highest were energy and finance companies, which each had six in-house litigation counsel on average, followed by retail/wholesale and health care (each with five attorneys), insurance (four attorneys), manufacturing (three attorneys) and real estate (two attorneys).

Each US corporate counsel handles an average of 10.2 litigation matters.

Each UK corporate counsel handles an average of 3.9 litigation matters.

Number of Corporate Counsel Managing Litigation

Response	US	UK	Under \$100 Million	\$100 - \$999 Million	\$1 Billion
<i>None</i>	8%	6%	14%	6%	0%
<i>1</i>	44%	32%	66%	43%	26%
<i>2</i>	19%	20%	15%	21%	19%
<i>3 - 5</i>	20%	18%	5%	25%	30%
<i>Over 5</i>	9%	24%	0%	5%	25%

* LITIGATION MANAGEMENT

Job Security for Corporate Counsel

The number of in-house attorneys managing litigation is not likely to decline anytime soon: virtually no one surveyed thinks that the number of lawyers managing litigation in America's corporations will decrease in the coming years. Not surprisingly, the overwhelming majority of companies plan to keep the number of in-house counsel the same in the future, and over 20% intend to increase the number.

Corporate Counsel Managing Litigation in the Future

Response	US	UK	Under \$100 Million	\$100 - \$999 Million	\$1 Billion
<i>Increase</i>	22%	26%	10%	22%	31%
<i>Stay the Same</i>	76%	74%	88%	76%	69%
<i>Decrease</i>	2%	0%	2%	2%	0%

Outside Help

Companies of all sizes and types rely heavily on outside counsel for litigation. In fact, 62% of the survey respondents outsource all of their litigation to law firms. Manufacturing, retail/wholesale and real estate companies were most likely to turn to outside counsel for all of their litigation.

US companies were more likely to assign more than half of their litigation outside than UK companies (86% and 74%, respectively). There was little difference among size of companies, with more than 80% in all three categories assigning more than half of their litigation matters to outside counsel.



Average Number of Outside Litigation Firms Used

Response	US	UK	Under \$100 Million	\$100 - \$999 Million	\$1 Billion
<i>None</i>	5%	0%	8%	2%	1%
<i>1</i>	8%	13%	22%	5%	3%
<i>2</i>	13%	21%	24%	13%	4%
<i>3</i>	15%	22%	15%	18%	4%
<i>4 - 5</i>	16%	19%	15%	22%	12%
<i>6 - 10</i>	19%	13%	12%	20%	16%
<i>11 - 20</i>	11%	4%	2%	11%	21%
<i>Over 20</i>	13%	8%	2%	9%	39%
<i>Average</i>	11.1	8.3	3.8	9.0	25.3

40% of the \$1 billion-plus companies considered diversity important in selecting outside counsel.

Diversity Is Clearly a Growing Issue

The survey results suggest that diversity issues are on the rise in corporate decision-making about which outside counsel to retain.

Twenty percent of US corporate counsel reported that diversity was an important factor in the selection of their outside litigation counsel.

Ten percent reported having written diversity policies in place.

Diversity concerns are plainly on the radar of the largest corporations: 40% of the \$1 billion-plus companies considered diversity important in selecting outside counsel, 30% reported having had a dialogue with outside firms regarding diversity, and 16% had written diversity policies to which outside counsel were required to adhere. By industry, insurance and health care companies were by far the most likely to have written diversity policies in place (20% and 19%, respectively).

LITIGATION *Hold Policies*

Information Management Emerges As Strategic Concern

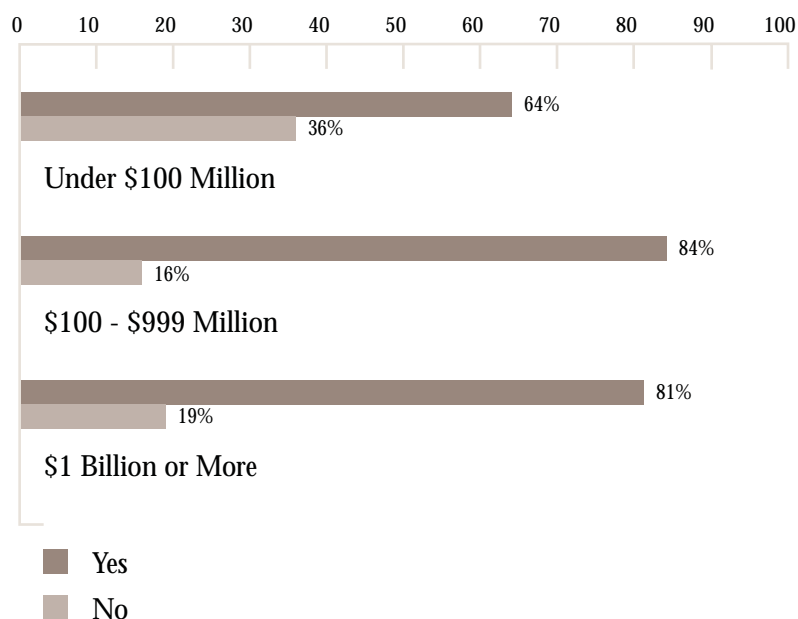
The explosion of electronic data has converged with the long-established principle of pre-trial, full disclosure to create liabilities and potential discovery costs that are unprecedented. The survey findings showed that 74% of the companies surveyed have litigation hold policies, and 82% have written records retention policies.

Yet more than a third of the smaller companies in the survey sample have no written litigation hold policy, and one-fourth have no records retention policy, which leaves them vulnerable. Regularly scheduled destruction of records, if not suspended when litigation is expected, can leave a company open to a charge of spoliation (willful or negligent destruction of evidence).

Almost half of the companies with litigation hold policies have revised them in the past year. This indicates a strong awareness of the increasing liabilities from this fast-changing area of the law where new rules and judicial decisions continually impact the records that companies may be expected to produce. Decisions arising from *Zubulake v. UBS Warburg LLC*, (S.D. N.Y.), for example, have placed greater responsibilities on both in-house and outside counsel for ensuring that correct procedures are followed to preserve records after a litigation hold is issued.



Percentage of Companies with Litigation Hold Procedures in Place



Fulbright attorneys serve on two Litigation Hold Special Project Teams of the Sedona Conference, a nonprofit research and education organization working on emerging issues in the areas of antitrust, complex litigation and intellectual property rights. Fulbright is also one of the very few law firms with a formal practice group for records management and litigation hold procedures.

Three Key Concerns Litigation Hold Policies Should Address:

- ✓ *Ensuring that recipients of litigation hold orders have received them and complied*
- ✓ *When back-up tapes must be preserved*
- ✓ *Company records held by third parties (e.g., research laboratories or outside vendors)*



CLASS ACTION FAIRNESS ACT

- ✔ *Nearly half of US respondents believe that the Act will have no impact upon litigation costs.*
- ✔ *Mid-sized and large companies and energy industry respondents were more likely to believe the Act would either decrease or have no impact on litigation costs.*
- ✔ *63% of respondents believe the Act will have no impact on liability; more respondents felt liability would be reduced rather than increased.*

CLASS ACTION CERTIFICATION

- ✔ *California companies had the highest percentage of class actions certified (28%).*
- ✔ *Texas was second with 11% of class actions certified.*
- ✔ *17% of large companies had all or some class actions certified against them in the last three years.*

MANUFACTURING INDUSTRY

- ✔ *Respondents in the manufacturing industry involved in class actions over the last three years increased from 24% to 30%.*
- ✔ *16% of respondents expect an increase in future class actions in the manufacturing industry.*
- ✔ *The Midwest was the only region to experience an increase in number of class actions (3%).*

ENERGY COMPANY

- ✔ *28% of energy companies had one to three class actions filed in the past three years.*
- ✔ *19% of energy company respondents had one or more class actions filed in the past year.*
- ✔ *Energy company respondents led all industries in expecting more class actions in the future (27%).*
- ✔ *Companies in Texas expect a dramatic increase in class action suits.*



CLASS *Actions*

REAL ESTATE

- ▮ *More than half again as many real estate respondents faced class actions in the last year compared with three years ago (20% vs. 13%).*
- ▮ *20% of real estate respondents claimed one or more class action suits filed within the past year.*
- ▮ *Only 14% of real estate respondents expect an increase in class actions.*

CLASS CONSCIOUS

- ▮ *Only 5% of smaller companies were targeted with class actions in the past year, while nearly 40% of companies with revenues of \$1 billion or more were served.*
- ▮ *75% of responding counsel believe the number of class action lawsuits will not change in the future.*
- ▮ *Roughly a third of the respondents reported that labor/employment was the area which had the largest percentage of class action activity during the past three years.*

Last year, 25% of the sample ranked class actions as one of their top five concerns, and 16% of this year's total survey sample had a class action filed against their companies in the past year. Only 6% of the UK sample reported class actions. The substantial liabilities that are inherent in just one class action, however, make this area a constant concern for companies far beyond what the frequency of this type of litigation might indicate.



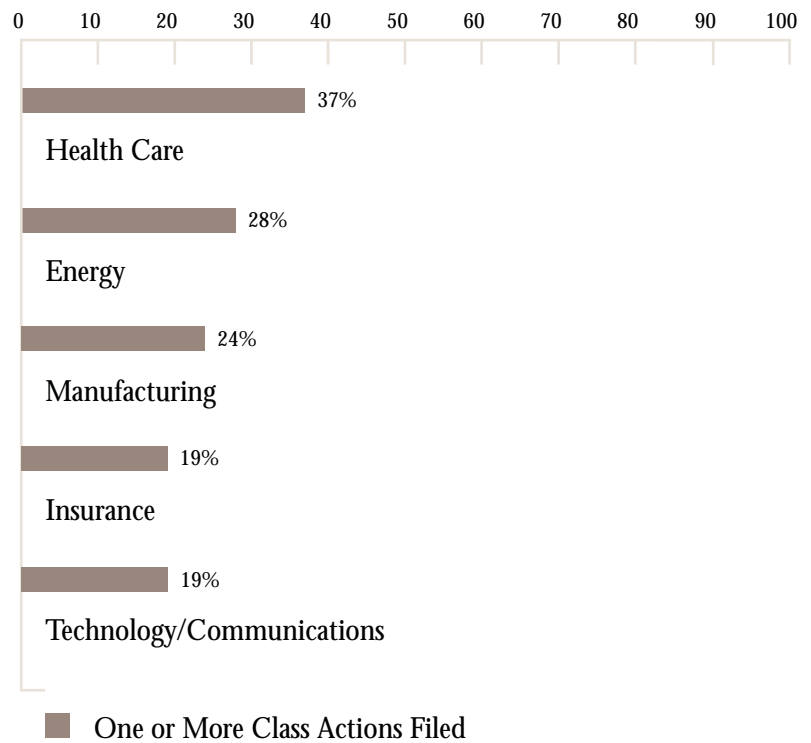
*** CLASS ACTIONS**

Impact of the Class Action Fairness Act

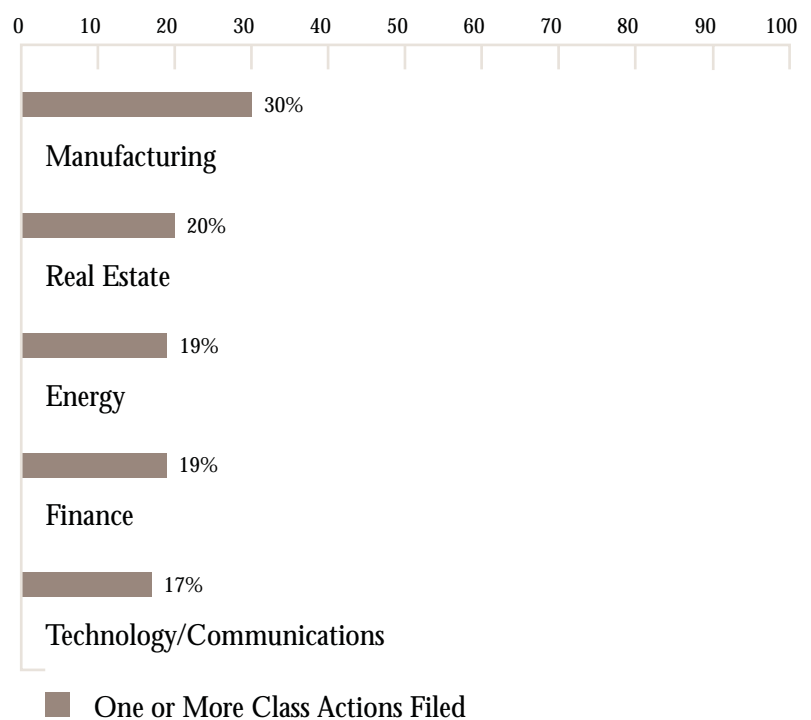
A large percentage of US corporate counsel predicts little impact from the Class Action Fairness Act of 2005. Nearly half believe the Act will have no impact on US litigation costs; 13% believe it will actually increase such expenses. Over a quarter of respondents, however, believe the Act will lead to a decrease in US litigation costs. Most optimistic were energy companies: 47% of industry respondents believe the Act will reduce litigation costs. The greatest pessimists were finance, retail/wholesale and health care companies, 25% of whom said the Act will increase litigation costs.

As for liability, 69% of US corporate counsel predict that the Act will have no impact on the liability their company faces; although 16% felt it would have a beneficial effect, only 6% said that its impact would be to increase their company's liability. Energy companies were again the greatest optimists, with 42% of counsel predicting a decrease in liability faced by their companies. Almost a quarter of health care companies agreed.

Highest Incidence of Class Actions Three Years Ago



Highest Incidence of Class Actions Last Year



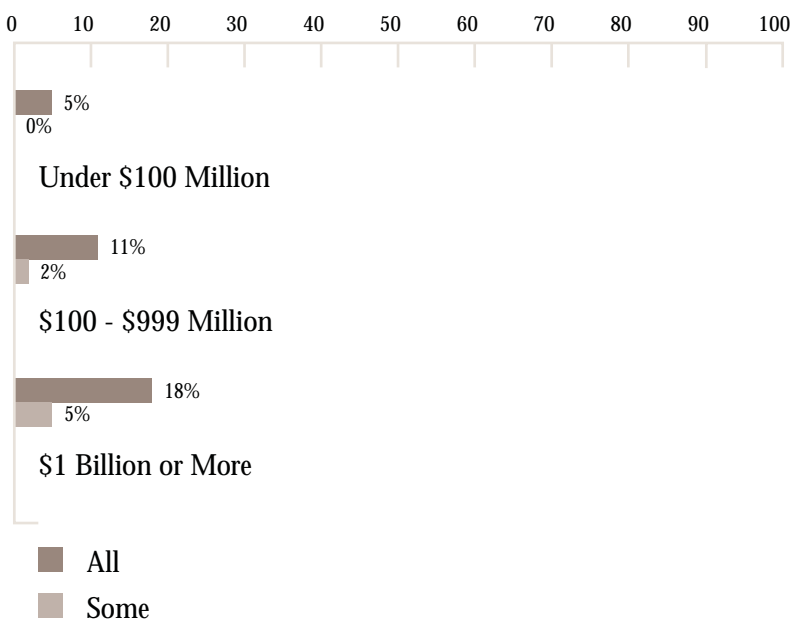
Classic Targets

The bigger the company, the more likely it is to end up at the receiving end of a class action. While only 5% of smaller companies were targeted with class actions in the past year, nearly 40% of companies with revenues of \$1 billion or more were served with class action lawsuits last year. Manufacturers were the most likely to be named as defendants in class actions; almost a quarter of them had at least one such action pending, and 6% had more than three pending. Energy, finance and real estate companies were the next most likely to have at least one class action filed against them last year, with the latter being the most likely to have been hit with more than three such actions.

High Energy Settlements

The highest concentrations of settlements before court consideration of class certification were in Texas and California. By industry sectors, energy companies were most likely to have settled all their cases (29%). When asked how many class actions filed against their companies had been certified in the last three years, 12% of the largest companies answered “all,” and in some industries, such as real estate and energy, the percentage answering “all” was far higher (25%).

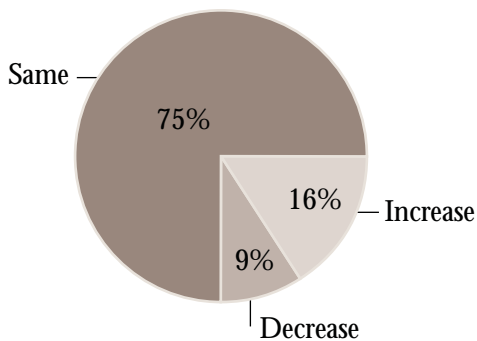
Percentage of Class Actions Settled Before Certification



Status Quo in the Future

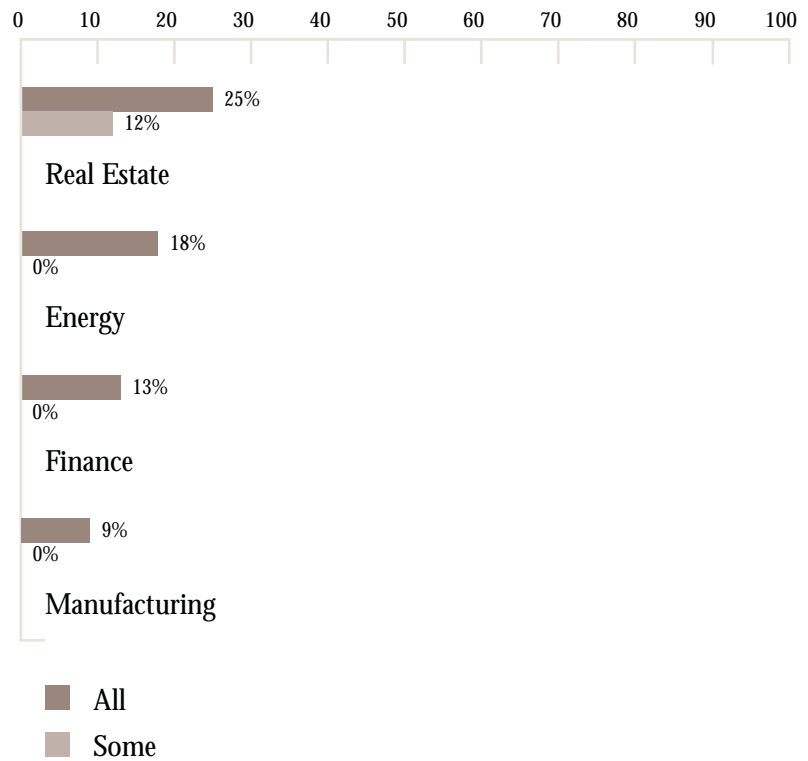
The prospects for the future don't seem terribly different. Three-quarters of responding counsel believe that the number of class actions filed against their companies would remain about the same going forward; an additional 16% believe the numbers will increase. Increases were expressed primarily by outside counsel for the largest companies and those in the energy industry. Paralleling their top litigation concerns and case dockets, about a third of the respondents reported that labor/employment was the area anticipated as being most active for class actions against their companies in the future.

Number of Future Class Actions Expected



* CLASS ACTIONS

Percentage of Class Actions Certified in Last Three Years



Leading Types of Class Actions

Response	Past Three Years	In the Future
<i>Labor/Employment</i>	38%	29%
<i>Securities Litigation/Enforcement</i>	31%	10%
<i>Product Liability</i>	17%	13%
<i>Environmental/Toxic Tort</i>	15%	12%
<i>Contracts</i>	10%	6%
<i>Personal Injury</i>	10%	4%
<i>Insurance</i>	10%	4%

**INTERNATIONAL
*Arbitration***

A World of International Arbitration

In last year's survey, arbitration/ADR was the second most mentioned trend likely to increase in the future. It was also very high among topics desired for further investigation by General Counsel in our future surveys. This year's findings reveal considerable sophistication regarding international arbitration. Companies are choosing arbitral rules and types of proceedings based on their industry and company size.

<i>Preferred Arbitration Rules</i>			
Response	Under \$100 Million	\$100 - \$999 Million	\$1 Billion or More
<i>AAA/ICDR</i>	63%	56%	49%
<i>International Chamber of Commerce</i>	44%	27%	28%
<i>London Court (LCIA)</i>	6%	17%	10%
<i>CPR Institute</i>	0%	8%	18%
<i>ICSID</i>	6%	2%	5%
<i>UNCITRAL</i>	0%	6%	8%
<i>WIPO</i>	0%	2%	3%





* INTERNATIONAL ARBITRATION

Administered vs. Non-administered Arbitration

Although nearly two-thirds of the total sample favored administered arbitration over non-administered arbitration, non-administered preferences were highest among companies with the most arbitration experience. This included the large companies and those in industries that use the process extensively (*i.e.*, finance, health care, energy and technology/communications). The fact that the AAA/ICDR offers more than 25 specialized sets of rules for specific industries also seems to be a factor in its strong showing among arbitral institution choices. American lawyers have a clear preference for AAA/ICDR; two-thirds identified them as their administering institutions of choice.

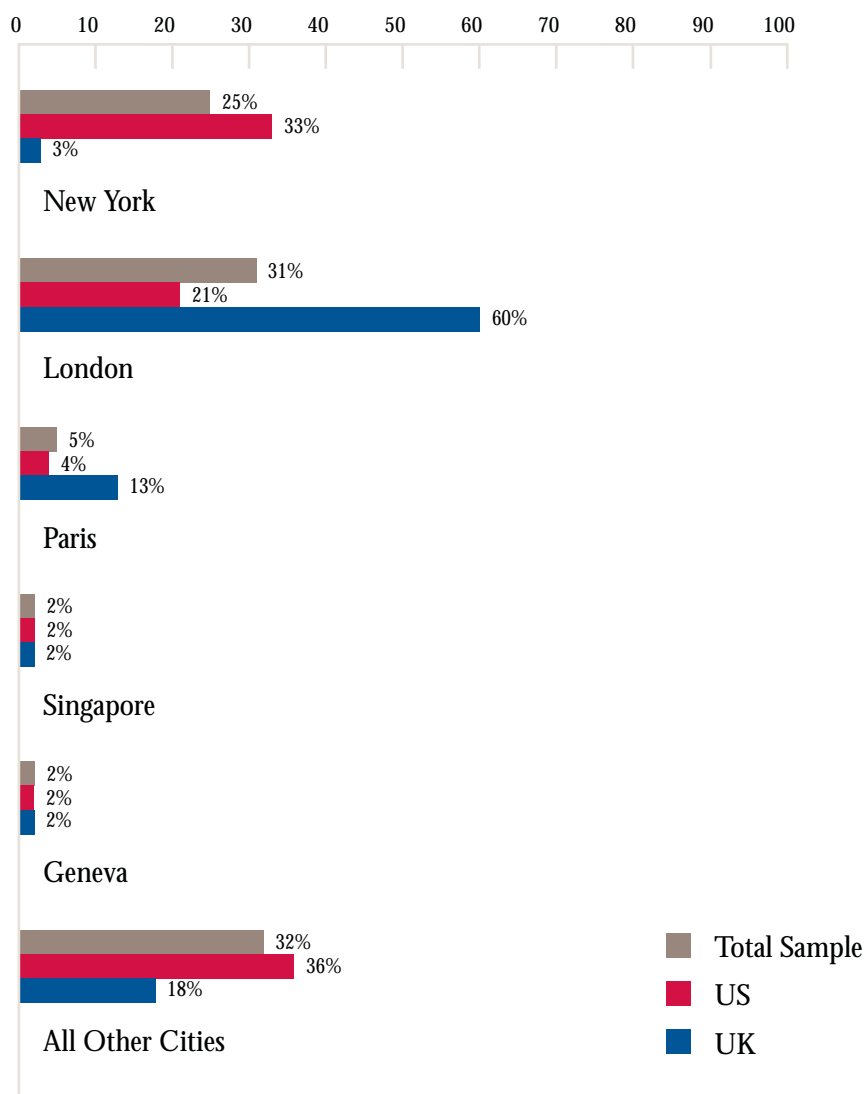
The second most popular (selected by less than a third) was the International Chamber of Commerce. Roughly 10% each said they prefer the London Court (LCIA) and the CPR Institute. The reasons that respondents gave an overwhelming thumbs-up to administered arbitration over non-administered arbitration were that they liked the process and the rules better and are more “familiar with that type” of arbitration.

Despite the frequent use of the three major venues (New York, London and Paris), there was a substantial use of other locations among all sizes of companies.

“Successful outside counsel is familiar with our business, familiar with the arbitration process and has the ability to deal with a variety of matters.”

General Counsel
New York-based Financial Institution

Most Frequently Used Venues



Contractually Agreed Dispute Escalation Process Saves Money

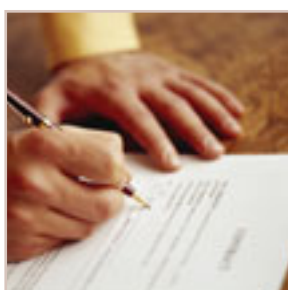
Approximately 60% of the UK companies and 51% of the US companies have, pursuant to pre-dispute agreements between the parties, resolved disputes in a multi-step process that entails:

- Direct negotiations between senior executives*
- Mediation*
- Arbitration*

Most that have tried the process believed it produced at least some savings, and only 2% believed it had increased costs. Among the largest companies, 94% believed it had produced savings.



WHAT WE'VE *Learned*



A Final Look

There is a growing realization of the potential costs and liabilities of electronic discovery among larger companies, but it is still dangerously lacking in smaller ones. Companies of all sizes are willing to litigate. Personal injury, product liability and intellectual property are all rising on the radar screen in frequency, concerns and costs. Finally, the thing corporate counsel most want from their outside law firms is help in controlling costs.

This overview of the Fulbright & Jaworski 2005 Litigation Trends Survey is available to our clients and friends. Please contact us if you would like further breakdowns of the data, whether by industry, company size or geography. We welcome the opportunity to conduct onsite, personal presentations of our survey findings for your company, as well as web seminars. In most jurisdictions, we can arrange for CLE credit.

If you have suggestions for topics to be covered or would like to participate in future surveys, visit our web site at www.fulbright.com or email us at litigationtrends@fulbright.com.

Thank you for your interest and when litigation complexity demands perspective, *Think Fulbright.*[™]

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