

# **NAVIGATING THE GLOBAL LANDSCAPE OF PRODUCT LIABILITY LITIGATION AND CLASS ACTION CLAIMS**

**DLA PIPER (US)**

OCTOBER 23, 2024



# OUR SPEAKERS



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# OUR PROGRAM

Overview of the global litigation landscape



Industry/sector trends



Plaintiff strategy shifts



Managing the Changing risks



In-house counsel perspective – what is working?

# THE GLOBAL LANDSCAPE



Skyrocketing settlements and nuclear verdicts



Shifting plaintiff strategies, bigger firms/bigger reach, and increased litigation funding



New regulatory reforms and consumer protection laws



Uptick in group litigations abroad and cross-border disputes

# MANAGING THE CHANGING RISKS

Brand protection  
emphasis

Managing globalization  
of lawsuits (eg,  
transnational discovery  
implications)

Monitoring and  
combatting online  
misinformation

Resolving disputes more  
quickly

Consistent messaging  
across jurisdictions

Balancing litigation risk  
with company's core  
mission

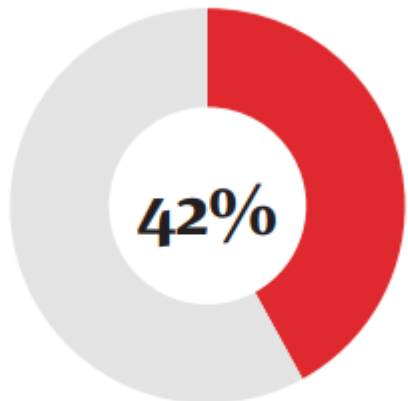
Using technology  
proactively

Anticipating  
government regulations

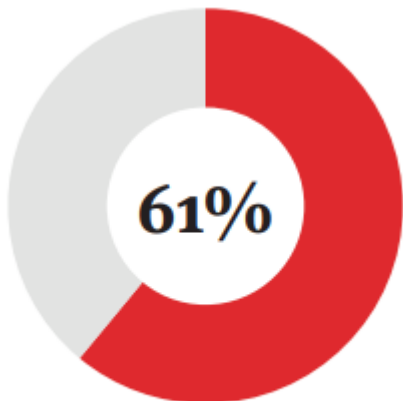
Addressing privacy  
concerns

# WHAT KEEPS YOU UP AT NIGHT

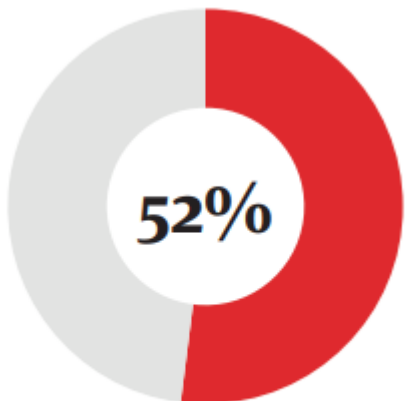




Expect volume of lawsuits to rise in 2024, while only 14% expect volume to decrease



Were involved in at least one regulatory proceeding in 2023, compared to 50% in 2022



Expect to increase the number of in-house litigators, up from 36% in 2023



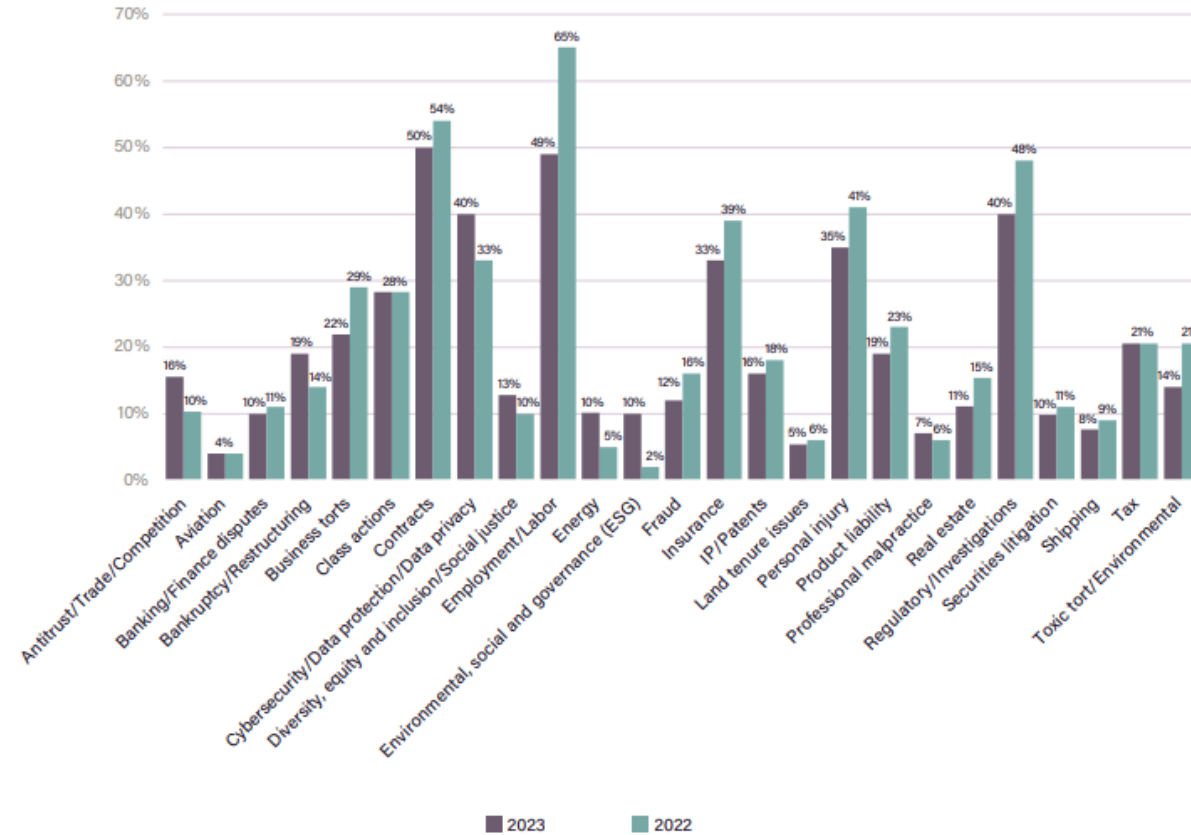
Average litigation spend for companies with US\$1bn or more in revenue



## Major trends

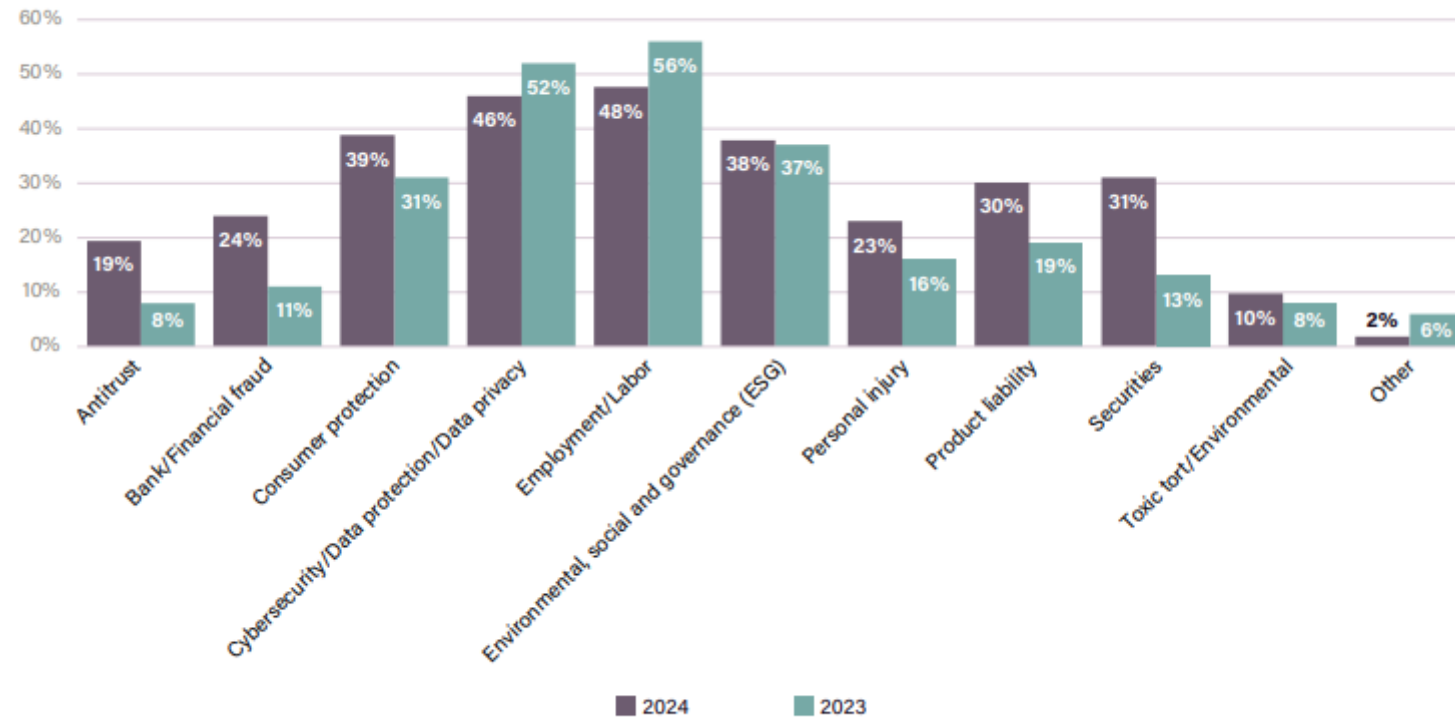
Cybersecurity, data protection and data privacy was a major theme in 2023. Forty percent of organizations experienced litigation in that area, up from 33% the previous year. It tied with regulatory matters as the third most common type of litigation last year and may soon overtake other issues – 44% of respondents say they are concerned about cybersecurity litigation in 2024, higher than any other litigation category.

Litigation areas experienced over the past 12 months



Q. In which of the following areas did your organization experience litigation matters over the past 12 months? Please select all that apply.

### Class actions of future concern



Q. Specifically, which type(s) of class actions is/are of future concern? Please select all that apply.

# CLASS ACTION OVERVIEW

## Class Action Litigation Report 2024



Written and edited by the Lex Machina Data Team  
Laura Hopkins, Esq., Class Action Practice Area Lead

Published May 2024

- In 2023, 9,705 class action cases were filed in federal district courts
- \$30.4 billion in total damages were awarded as Approved Class Action Settlements from 2021 to 2023
- In 2023, total damages awarded was \$11 billion across 516 cases

### Case Resolutions for Cases Terminated

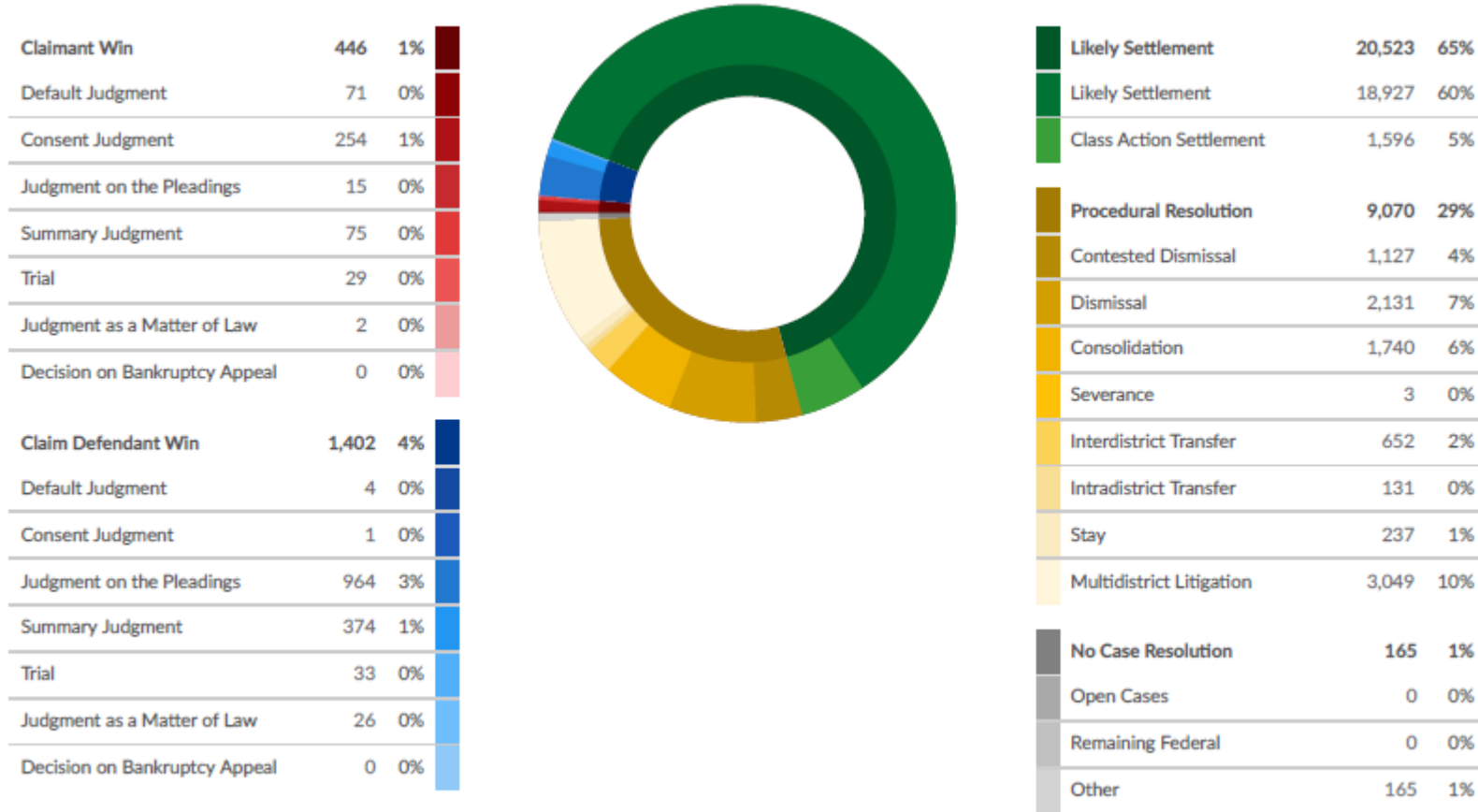
2021-2023

In Federal District Court



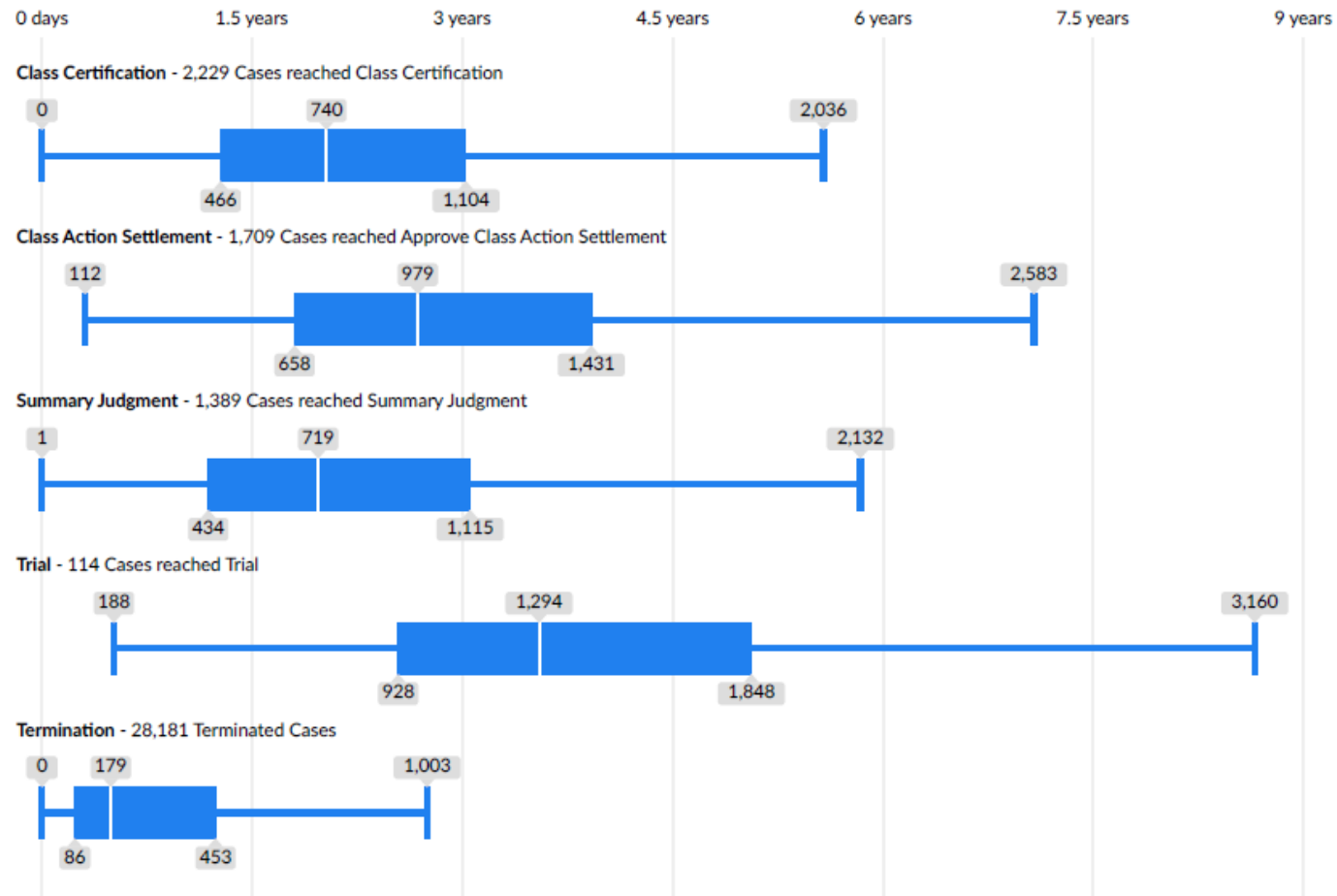
# RESOLUTION SUMMARY

Figure 18: District Court Case Resolutions for Cases Terminated from 2021 to 2023



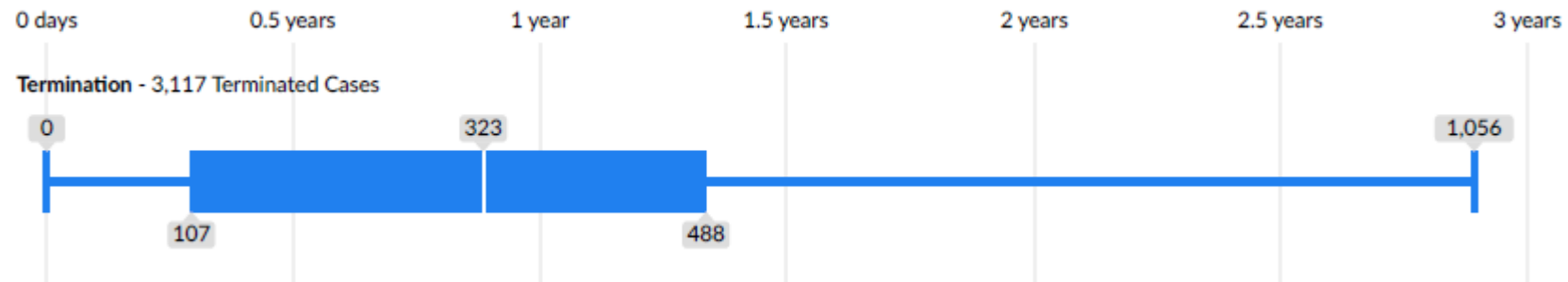
# TERMINATION ACTIVITIES

Figure 16: Time to Events in Class Action Cases Terminated from 2021 to 2023 (excluding MDL Associated Cases)



# APPELLATE TRENDS

Figure 17: Time to Termination in Class Action-Originating Federal Appellate Cases Terminated from 2021 to 2023



## Reversal Rate of Reversed or Affirmed Cases

33%

Reversal rate

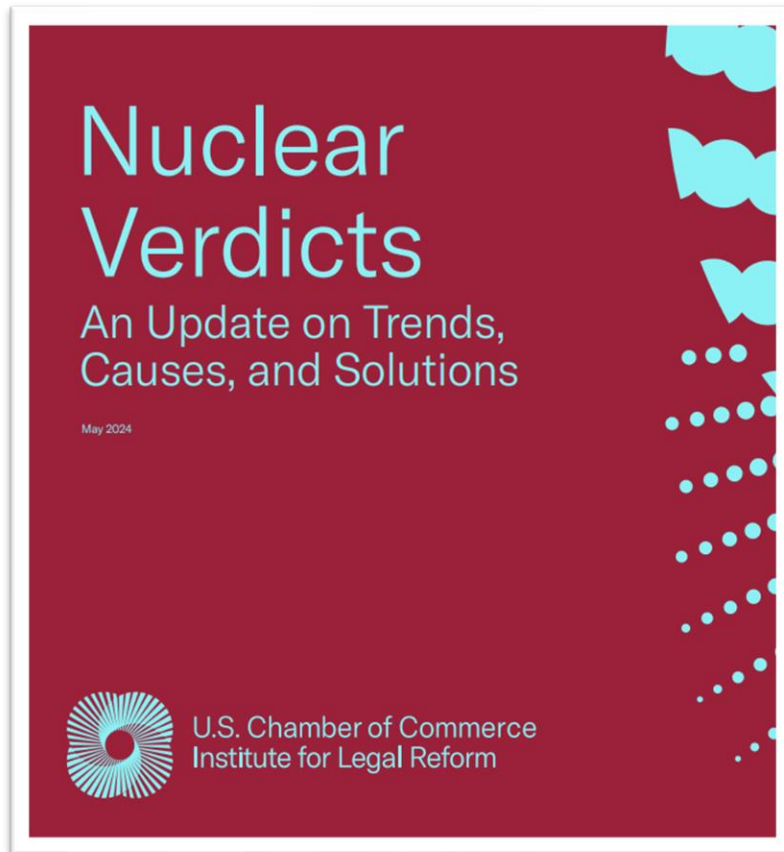
67%

Affirmance rate



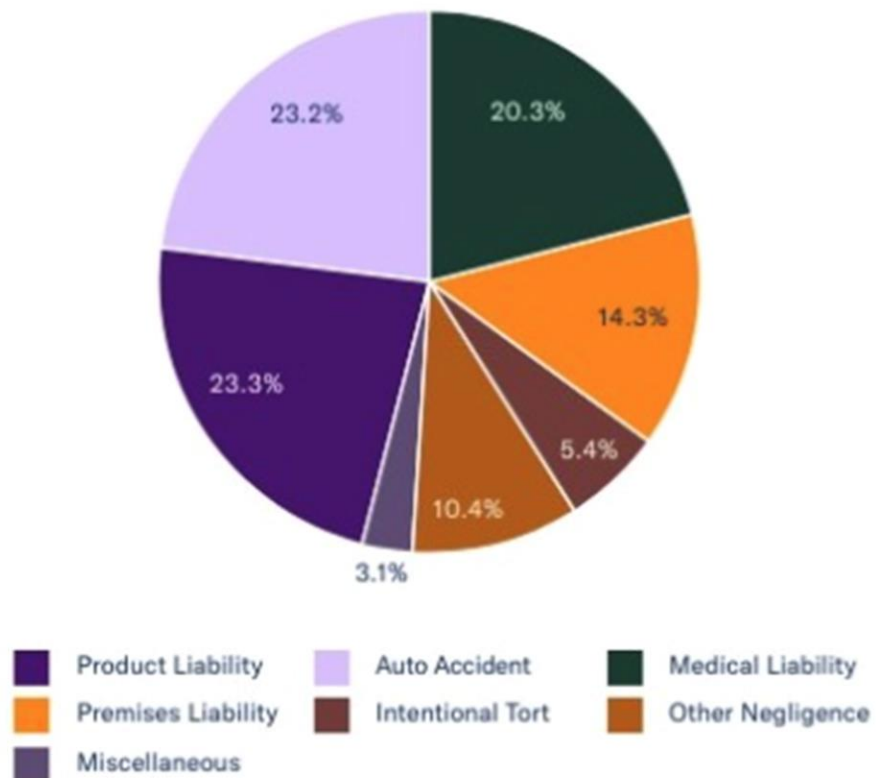
The reversal rate is calculated by dividing the number of cases (547) that were either ● Reversed (345) or ● Affirmed / Reversed in Part (202) by the total number of cases (1,666) that were ● Reversed, ● Affirmed / Reversed in Part, or ● Affirmed (1,119).

# NUCLEAR VERDICTS (OVER \$10 MILLION)



- From 2013 to 2022, the median nuclear verdict was \$21 million, and the **mean was \$89 million**
- Products, auto accident, and medical liability account for **2/3** of all nuclear verdicts
- Product liability nuclear verdicts are increasing in size far more quickly than other verdict types, rising to a median value of \$36 million in 2022 from a starting median of \$24 million in 2013 (**a 50-percent increase**)
- State courts represented **\$9.1 billion, or 62 percent**, of nuclear verdicts
- California, Florida, New York, and Texas collectively produce half of the nation's nuclear verdicts

**Figure 1: Nuclear Verdicts by Case Type, 2013 – 2022**

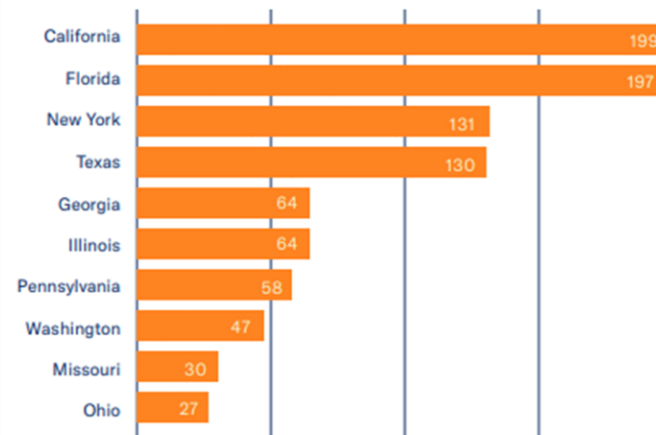


Source: U.S. Chamber of Commerce Institute for Legal Reform report

**Table 1: Mean & Median Nuclear Verdict by Litigation Type, 2013 – 2022**

Litigation Type	Mean	Median
Product Liability	\$215.9 Million	\$25.0 Million
Other Negligence	\$99.8 Million	\$20.0 Million
Intentional Tort	\$94.6 Million	\$28.6 Million
Auto Accident	\$46.4 Million	\$21.0 Million
Medical Liability	\$33.6 Million	\$19.6 Million
Premises Liability	\$32.5 Million	\$20.0 Million
Miscellaneous	\$31.5 Million	\$22.4 Million
All Personal Injury / Wrongful Death	\$88.9 Million	\$21.1 Million

**Figure 5: Top 10 States by Cumulative Nuclear Verdicts, 2013 – 2022**



# TOP CLASS AND COLLECTIVE ACTION SETTLEMENTS (FIRST HALF OF 2024)

Practice	Case	Amount
<b>Antitrust</b>	<i>Burnett, et al. v. The National Association Of Realtors</i> , Case No. 19-CV-332 (N.D. Ill. Mar. 15, 2024)	<b>\$418 million</b>
<b>Consumer</b>	<i>In Re Kia Hyundai Vehicle Theft Marketing, Sales Practices, And Products Liability Litigation</i> , Case No. 22-ML-3052 (N.D. Cal. July 15, 2024)	<b>\$145 million</b>
<b>Data Breach</b>	<i>In Re Alphabet Inc. Securities Litigation</i> , Case No. 18-CV-6245 (N.D. Cal Apr. 9, 2024)	<b>\$350 million</b>
<b>L&amp;E</b>	<i>Utne, et al. v. Home Depot USA Inc.</i> , Case No. 16-CV-1854 (N.D. Cal. Mar. 8, 2024)	<b>\$72.5 million</b>
<b>Privacy</b>	<i>In Re Facebook Internet Tracking Litigation</i> , Case Nos. 22-16903 and 22-16904 (9th Cir. Feb. 21, 2024)	<b>\$90 million</b>
<b>Products</b>	<i>In Re Aqueous Film-Forming Foams Products Liability Litigation</i> , MDL 2873 (D.S.C. Mar. 29, 2024)	<b>\$10 billion</b>
<b>Securities</b>	<i>In Re Apple Inc. Securities Litigation</i> , Case No. 19-CV-2033 (N.D. Cal. Mar. 15, 2024)	<b>\$490 million</b>

# INDUSTRY TRENDS

- Data privacy, artificial intelligence (AI), Internet of Things (IoT)
- Automotive industry developments
- Competition and consumer protection
- Interconnectivity



# DATA PRIVACY, ARTIFICIAL INTELLIGENCE, INTERNET OF THINGS

- Definition of “product” is expanding beyond physical products and into digital services, software, etc.
- See, e.g., *In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*
- Continuously changing “standard of care”

# AUTOMOTIVE INDUSTRY UPDATES

- Updates in AVs, EVs, and ICEVs
- Government regulation contributing to massive class actions/MDLs
- Example: Airbag inflator technology recalls impacting over 67 million vehicles
- Changes to traditional strict liability risk/utility assessment
- Duty to anticipate technological advancements

# COMPETITION AND CONSUMER PROTECTION

- New regulatory schemes increasing (and, at times, improper) class actions
- Example: UK Competition Appeals Tribunals
- Globalization of consumer goods and the potential liability for extrajurisdictional conduct

# INTERCONNECTIVITY

- Multijurisdiction litigation
- Fishing expeditions and use/abuse of US style discovery
- International compliance complications, eg, privacy concerns
- Consistency of positions

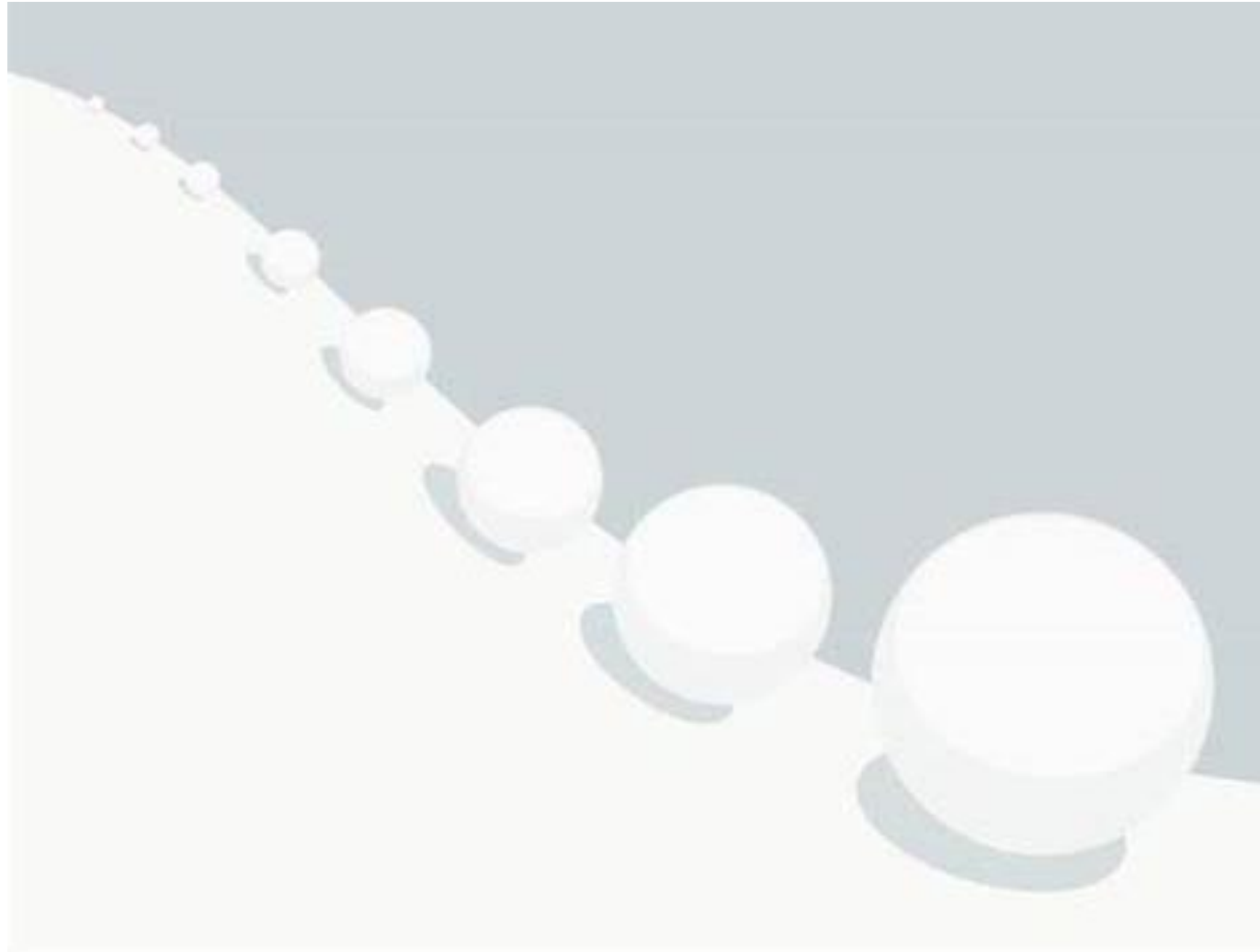
# IN-HOUSE PERSPECTIVE: BALANCING OUTSIDE COUNSEL



# IN-HOUSE PERSPECTIVE: MANAGING THE BRAND



# IN-HOUSE PERSPECTIVE: SETTLEMENT RISK/BENEFIT ANALYSIS



# IN-HOUSE PERSPECTIVE: ANTICIPATING



# KEEPING UP WITH PLAINTIFFS' COUNSEL



# ADVERTISING



## TV Legal Ads Proving Useful Radar for Next Big Mass Tort Categories

Tracking television legal ads that solicit plaintiffs for mass torts can give general counsel early warning of new trends and gauge the plaintiffs' bar's appetite in product litigation categories.



# LITIGATION FUNDING

**Chambers**  
AND PARTNERS

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## Litigation Funding 2024

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## US judicial panel to examine litigation finance disclosure

By Nate Raymond

October 10, 2024 5:41 PM EDT · Updated 5 days ago



# KEY TAKEAWAYS

Conduct settlement risk/benefit assessments early and often.

Remember the bigger picture – where does this litigation fit into my client's overall business strategy?

Have a global perspective – consider each case's impact on future litigation.

One takeaway that we will be talking about at next year's symposium?

# THANK YOU, SPEAKERS



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