

AN FTI CONSULTING REPORT – PUBLISHED JULY 2024

The Decade of Disputes: Litigation is on the Boardroom Agenda for the Year Ahead



As we approach the mid-way point of what has been described in previous reports as “The Decade of Disputes”, FTI Consulting has undertaken research with over 250 leaders of large businesses, representing aggregate annual turnover in excess of \$1tn and over 6 million employees, to understand how litigation has shaped decision-making in their respective organisations.

Key Insights

1. We are seeing a steady increase in litigation as a boardroom agenda item.

Most business leaders now regard the threat of litigation as one of the key business risks. The reputational risk inherent to litigation is of particular concern to companies. In some cases, it is the primary concern for leaders, beyond the outcome of the litigation itself.

2. Boards and Executive Committees are more concerned about litigation risk than others in senior management roles.

In other words, litigation is viewed as a matter of strategic significance, requiring the attention of the most senior leadership.

3. The risk of business disruption is best mitigated with a broad cross-functional team.





Given the extent to which reputation figures as a key threat to companies facing litigation, a broad group of internal stakeholders engaged in the planning process should include communications and corporate affairs professionals playing a pivotal role.



1. Litigation is on the Rise – and is More Likely To Be Material

5 years ago, FTI undertook the first edition of this research series, finding that business leaders were anticipating an increase in litigation in the years ahead. This trend has been born out over the years by our research.

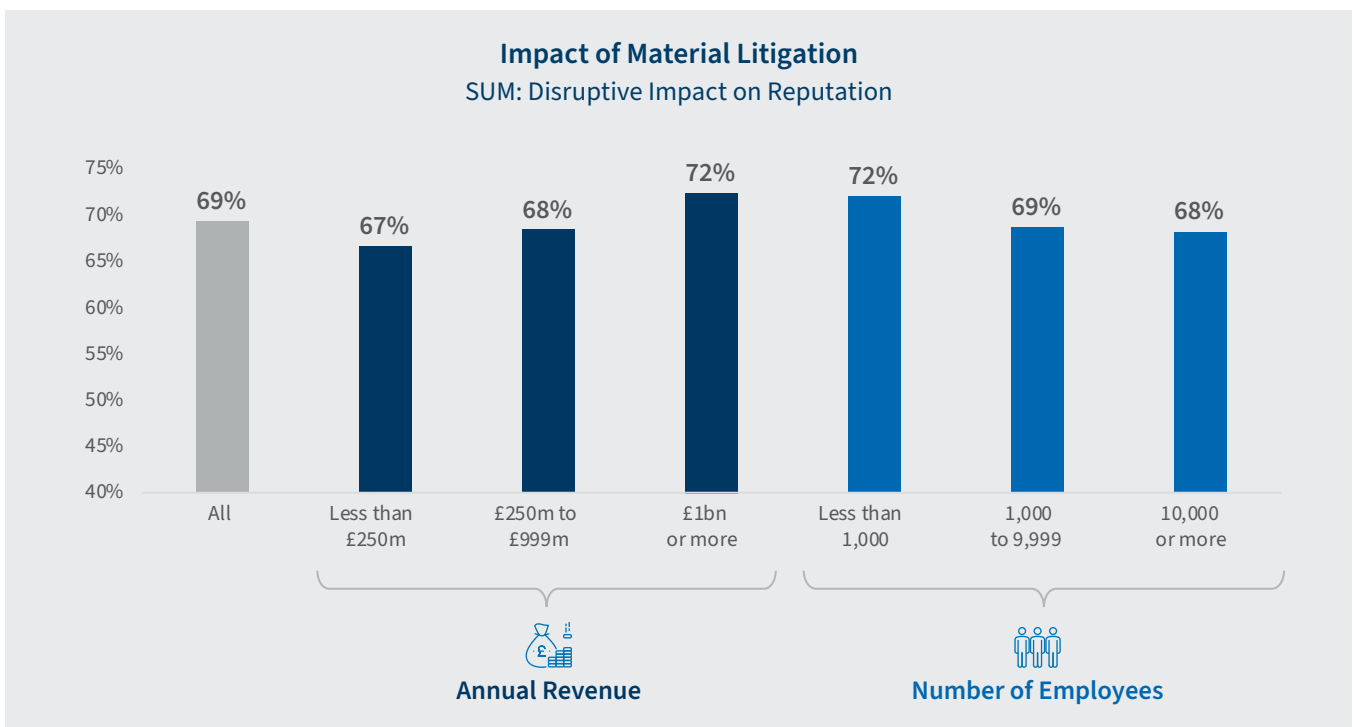
Approximately 6 in 10 (59%) of business leaders surveyed in 2024 have seen an increase in litigation compared to a year ago, and over half (52%) are concerned by the risk of litigation in the next 12 months (this includes current and prospective litigation). The most common types of disputes relate to:

-  1. Employment (45%)
-  2. Contractual/commercial disputes (28%)
-  3. Fraud (24%)
-  4. Tax (24%)

Additionally, the research has found that over 1 in 3 large companies (35%) are currently engaged in material litigation. Of those surveyed, the average size of largest claim facing the company was found to be \$425m. Over 8% of respondents have been engaged in litigation in the last 12 months for a claim in excess of \$1bn.

One factor that may be contributing to the impact of material disputes is the rise in class actions seen by businesses. It is noteworthy that over half (53%) of companies surveyed reported that class actions or mass claims are becoming more costly for their company to manage.

In terms of impact, the largest companies in terms of revenue found that material claims have the greatest disruptive impact to the organisation’s overall reputation. Meanwhile, the largest companies in terms of number of employees found that the opposite was true. It suggests that material claims, by nature of their large value, matter from a financial and investor perspective but become business-as-usual for large organisations whose employees may be concerned with a range of other issues on a day-to-day basis. This trend should not be overstated though, with more than two-thirds of businesses employing over 10,000 people still finding such claims to be reputationally disruptive.



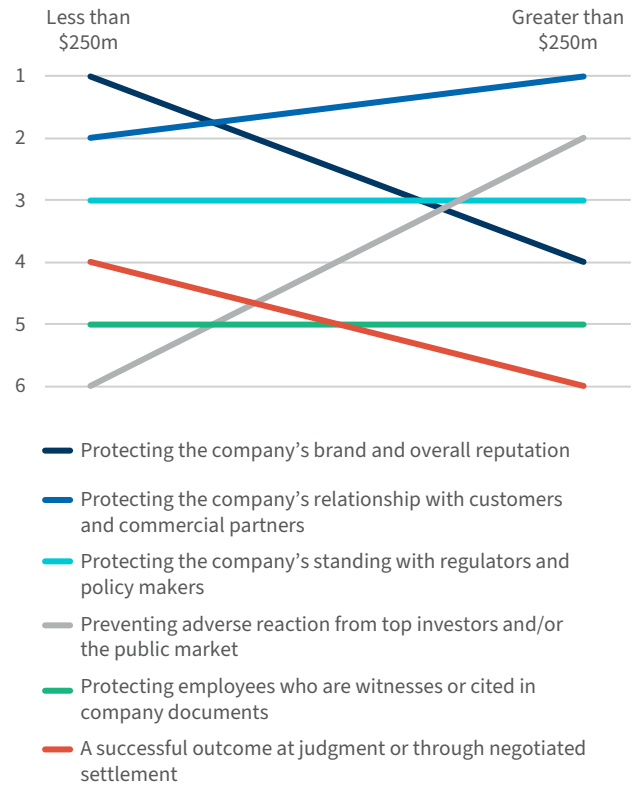
2. Reputation is the Highest Priority for Many Business Leaders

When determining their legal strategy, large UK organisations prioritise the following considerations in the order set out below. It is noteworthy that businesses place a greater emphasis on protecting the company’s overall reputation and relationships with corporate stakeholders than achieving a successful outcome at judgment or through negotiated settlement.

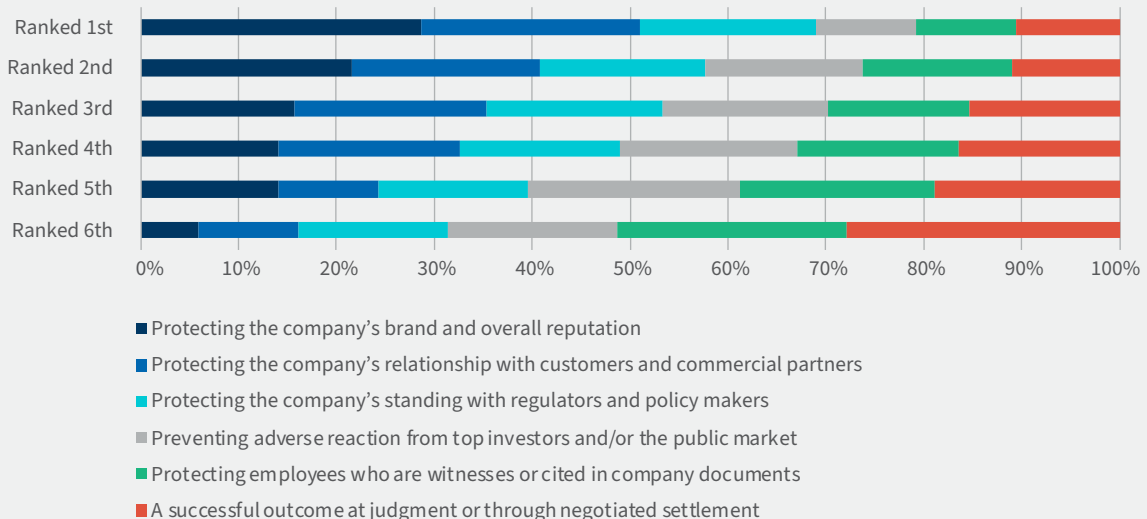
This is reflective of a Boardroom perception of the disruptive impact of litigation, with 69% of respondents saying such cases gave serious concern for damaging reputation, 63% stating that it risked increasing future regulatory scrutiny and 60% stating that it damaged investor confidence. According to respondents at Board level, 13% reported that their company was facing one or more cases that could have an existential impact on the future of the business and more than one in four (29%) of material cases were found to meet this description.

Nonetheless, when looking at claims in excess of \$250m, we start to see a difference in priorities among business leaders. For these large claims, financial factors take precedence – both from a revenue and investment perspective – with the company’s customers, commercial partners and shareholders becoming the most important stakeholders to manage.

Priorities Differ Based on the Size of the Claim



Factors in Order of Priority When Determining Legal Strategy



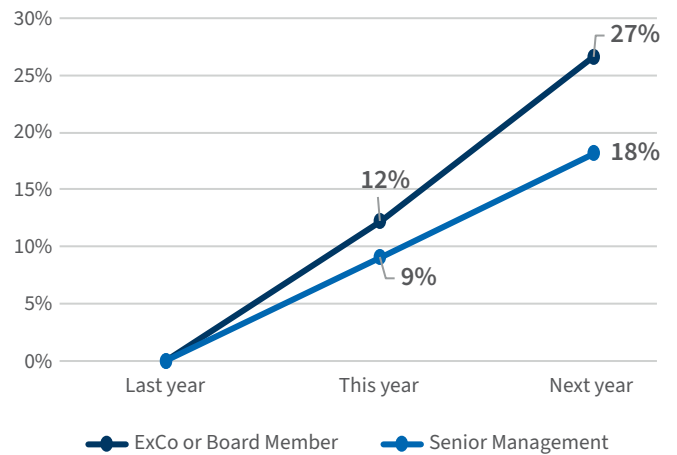
3. Litigation is Firmly on the Boardroom Agenda

FTI Consulting’s research found that Board members and those in C-suite executive positions view the reputational risks posed by litigation as the most significant risks facing their businesses. This suggests that litigation risk counts as one of the principal, strategic considerations of large companies, rather than being a purely operational or legal concern.

Additionally, they are 31% more likely than senior management in non-Board roles to anticipate a vulnerability from fraud or financial misstatement, 33% more likely to foresee compliance vulnerability and 34% more likely to see risk of class action.

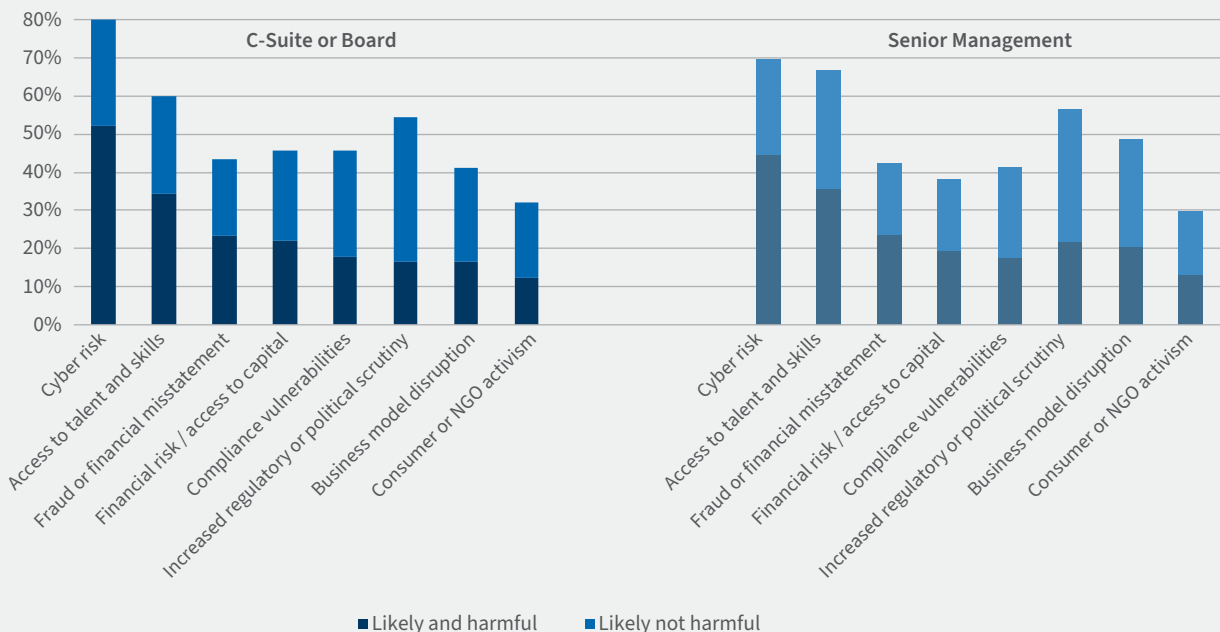
Of the Board and Executive Committee (ExCo) members that anticipate class action claims against their companies, 43% are likely to see them as posing a risk of harm for the business. However, that is not to say that these are the only legal or business risks on the Boardroom agenda. FTI Consulting’s research found that Boards and senior management teams are anticipating a range of issues to address in the year ahead, the most significant of which appear to be risks relating to cyber, talent and the potential for fraud or other financial misstatement. It is notable that while ExCo and Board members are more likely to

Perceived Increase In Vulnerability From Risk Of Litigation



anticipate risk overall, they are also more likely to assess such risks as not harmful to the business. Members of the senior management not on the ExCo or Board were broadly more aware of risks relating to operational matters (e.g. access to talent, business model disruption), compared to legal risks.

On The Boardroom Agenda – Events Likely in the Year Ahead

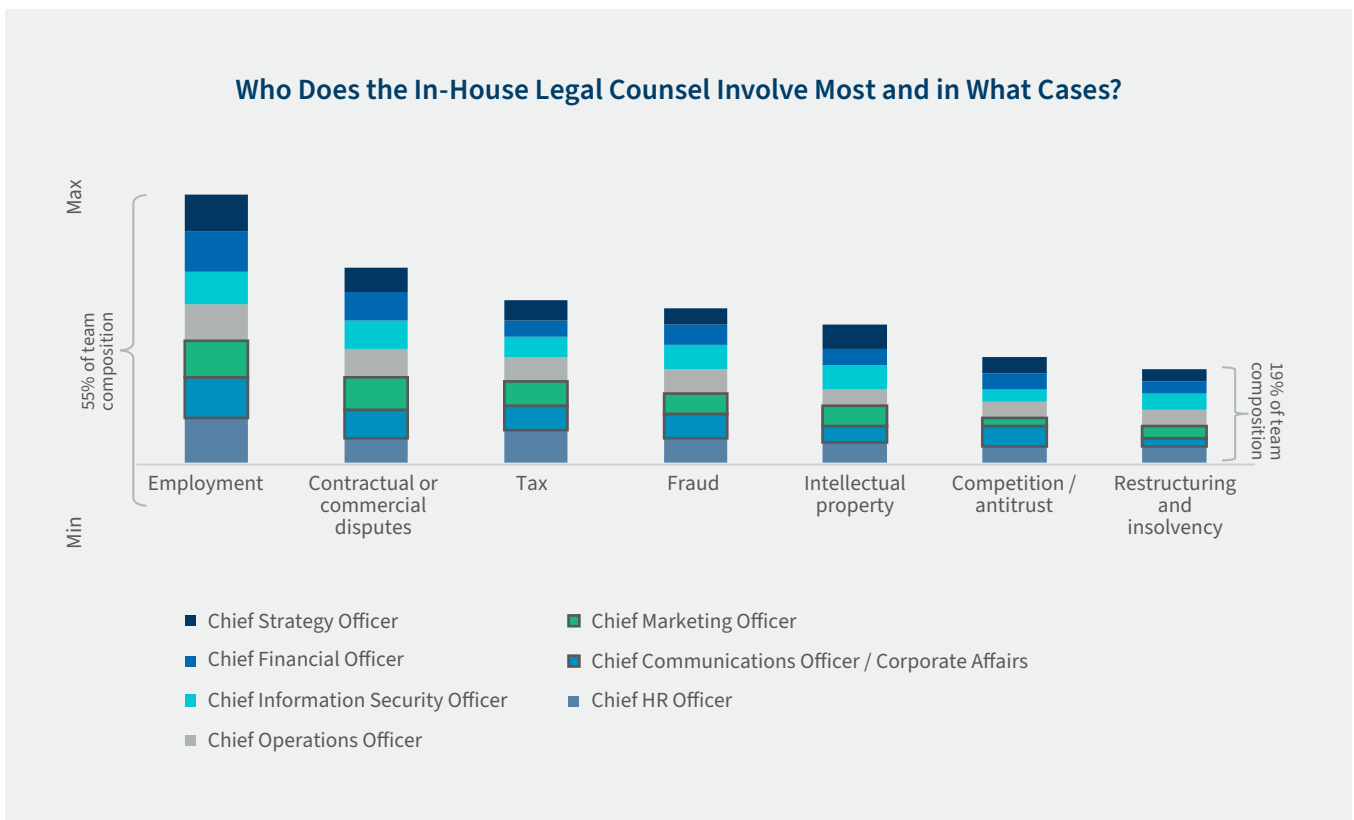


4. Mitigating Against the Risk of Disruption Requires Broad Engagement Across C-Suite Functions

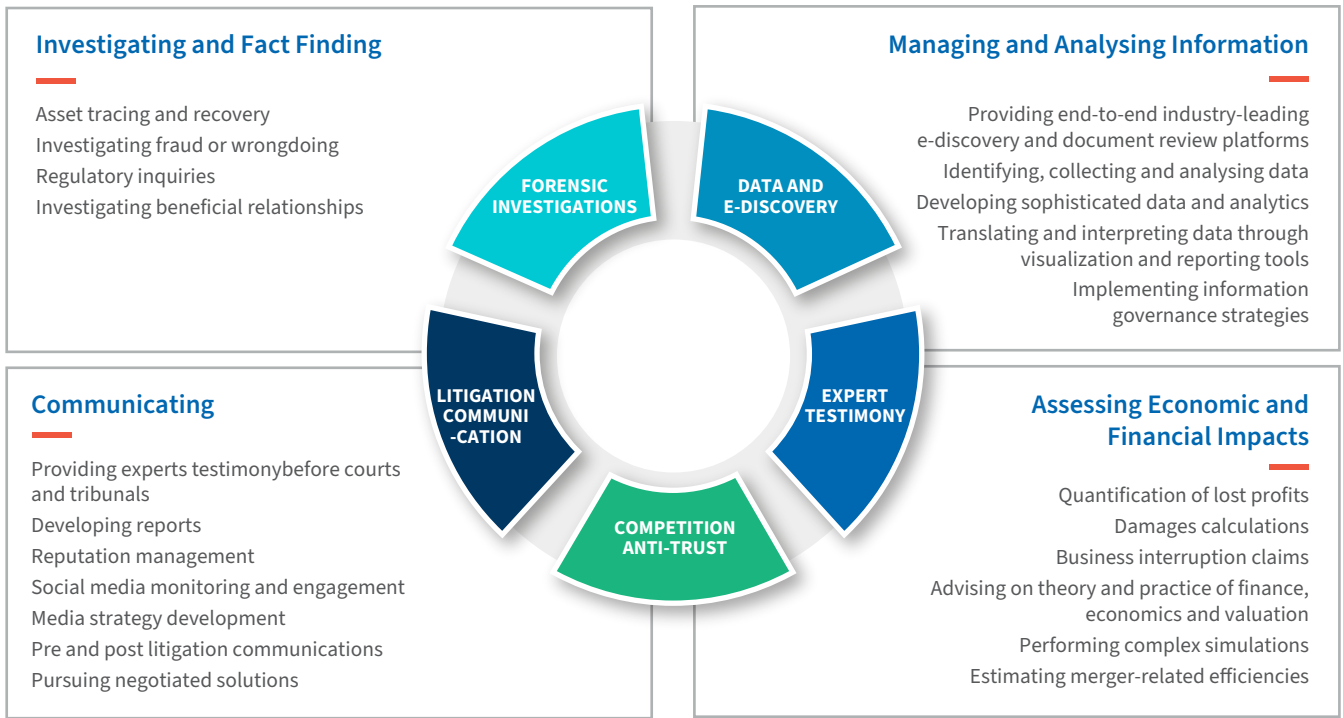
Despite reputational damage being the biggest priority for business leaders when defining a legal strategy, FTI Consulting’s research has found that only 24% of businesses are including their Corporate Affairs team in the organisation’s response to material litigation. In order to successfully mitigate against reputational damage, Corporate Affairs should be included from the start so they can adequately implement reputation protection strategies.

Additionally, when dealing with litigation, business leaders should look to their wider C-suite to advise on potential risks and response plans to enhance their risk mitigation planning. Our research has shown that

on average communications and affairs leaders, along with the HR function, are the most frequently sought out professionals to partner with legal teams in helping organisations manage the disruptive impact of litigation. Unsurprisingly, HR has an outsized role in employment cases as well as tax cases, while strategy has an outsized role on IP cases. Marketing teams are relatively more involved in tax and fraud cases, as two areas often in the media spotlight and with the potential to adversely affect customer trust. Meanwhile, insolvency cases have the closest knit of people and functions involved, followed by competition disputes.



Our Activity Through the Litigation Lifecycle



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“They have global teams in various jurisdictions which they can mobilise. They are stellar operators; I really rate the people at FTI.”

“FTI have seen and done it all. Experience matters to clients, and FTI have it. They have top-notch talent who are always a text message away.”

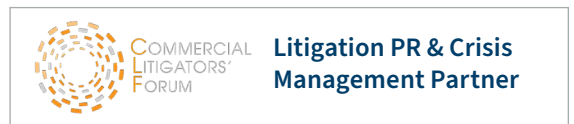
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