

Litigation Report Highlights 'Fearsome Foursome,' Spending Trends

By Jack Karp

Law360 (October 4, 2023, 4:32 PM EDT) -- Four law firms are the ones general counsel and law firm leaders most fear having to face off against in court, according to a new report set to be released Thursday.

Gibson Dunn & Crutcher LLP, Jones Day, Kirkland & Ellis LLP and Quinn Emanuel Urquhart & Sullivan LLP are the four firms, in alphabetical order, named the "Fearsome Foursome" in BTI Consulting Group's Litigation Outlook 2024.

"These are the firms striking the deepest fear into the hearts of seasoned general counsel and legal decision makers," BTI President Michael B. Rynowecer told Law360 Pulse. The clients BTI surveyed called these firms "relentless," "cunning" and "aggressive," Rynowecer added.

This is the third consecutive year that Jones Day, Kirkland and Quinn Emanuel have made it into this most feared foursome, with Gibson Dunn joining this time around.

Companies' spending on litigation — whether they hire these four firms or face them in court — is also likely to increase faster than the number of their cases next year, in a reversal of last year's trend, though those companies will still face a record number of cases, according to BTI's report.

More than half of companies — 54% — plan to increase their litigation budgets while only 13% plan to cut them. That means 87% of clients will have 2024 litigation budgets that are larger than or equal to what they were in 2023, Rynowecer said.

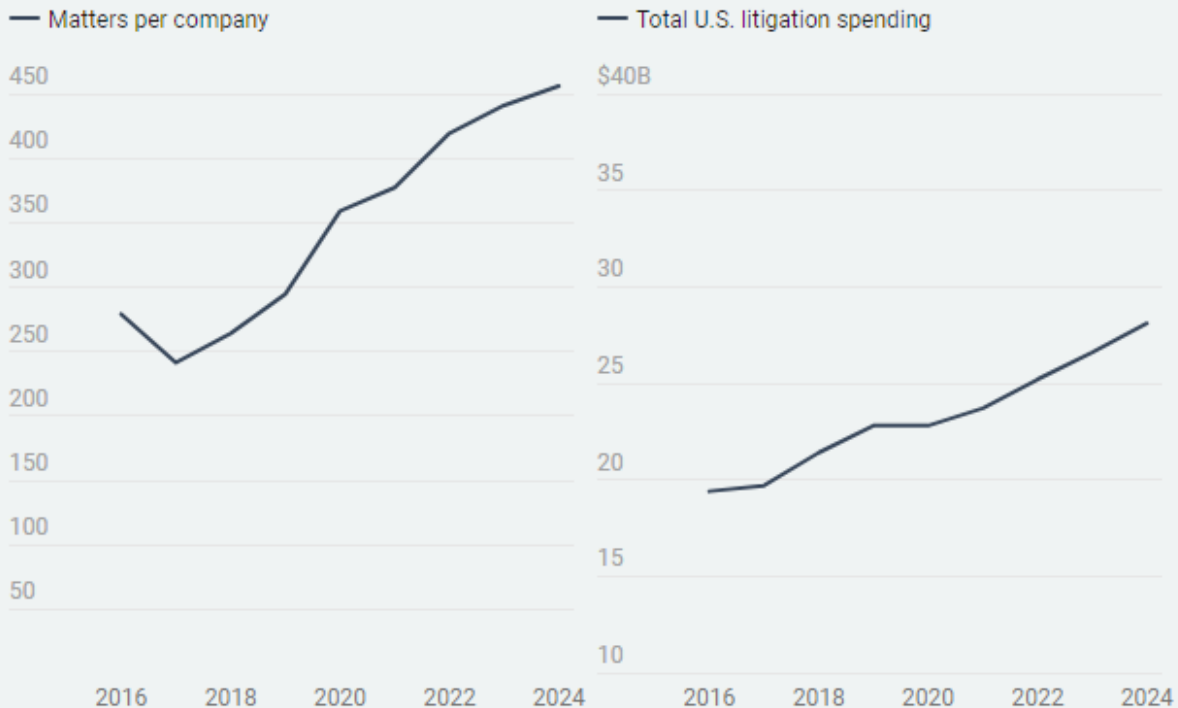
"And last year was a record," he added. "Next year's going to be another record."

Spending on litigation is expected to grow 5.8% to \$28.1 billion in 2024, up from \$26.6 billion in 2023, a continuation of a trend that has seen litigation spending increase almost every year since 2016, according to BTI.

"Complex and high stakes matters are the sweet spots," the report says. "This is where the money is headed."

Spending Outpacing Caseloads

Unlike last year, companies' spending on litigation will grow faster than the amount of litigation next year.



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The report outlines eight practice areas where clients are likely to spend the most money — and firms are likely to see the biggest opportunities — next year.

The largest dollar increase in spending will come in employment litigation, which is expected to see spending rise to \$8.39 billion in 2024 from \$7.82 billion last year.

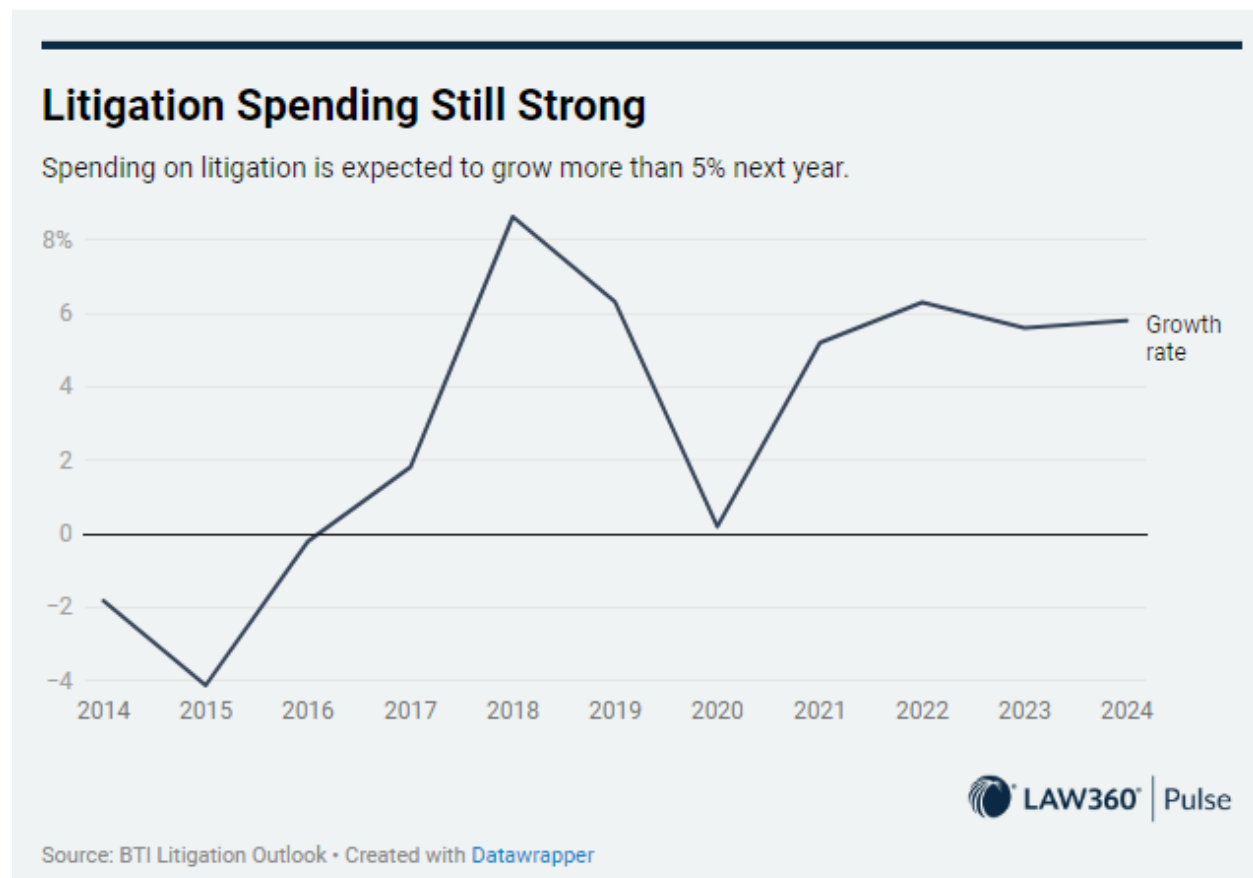
That increase is driven by a "blizzard" of new regulations and one of the most "demanding" workforces in decades, with both employees and government agencies more willing to take action against employers, according to the report.

Cybersecurity and privacy spending is expected to show the largest percentage increase, rising 9.9% to \$2.91 billion next year as a result of more data breaches and greater public awareness of them, the report says.

"You read about the ransomware, you read about the breaches every day," Rynowecer said. "That's driving cyber."

Other practice areas likely to see growth in 2024 include class actions, intellectual property, product liability, and securities and finance, according to the report.

But commercial litigation will remain the segment with the most overall spending, according to the report. Companies are projected to spend \$8.4 billion on commercial litigation in 2024, up 4.9% from 2023.



And there are likely to be bigger but fewer bet-the-company cases, with clients anticipating new high-stakes matters involving technology, mergers and acquisitions, IP disputes, and health care and pharmaceuticals, the report says. Companies are projected to spend \$1.47 billion on bet-the-company matters next year.

"Business is getting more complex with more complicated agreements and commercial transactions. Agreements are also worth a lot more money now — a formula for a continuing stream of bigger and more complicated litigation," the report explains.

The litigation arenas expected to grow in 2024 remain consistent, having been the same areas where BTI predicted growth in 2023.

But they won't grow as fast as last year, according to Rynowecer. Litigation spending in cybersecurity is expected to grow 9.9% in 2024, for instance. Last year, BTI predicted a 13.4% increase in cybersecurity litigation spending. BTI expects securities litigation to grow 4.6% next year. Last year, it anticipated litigation in that area would rise 6.6%.

That means that while there is more money to be spent, it may be harder for law firms to dig up that business, Rynowecer said.

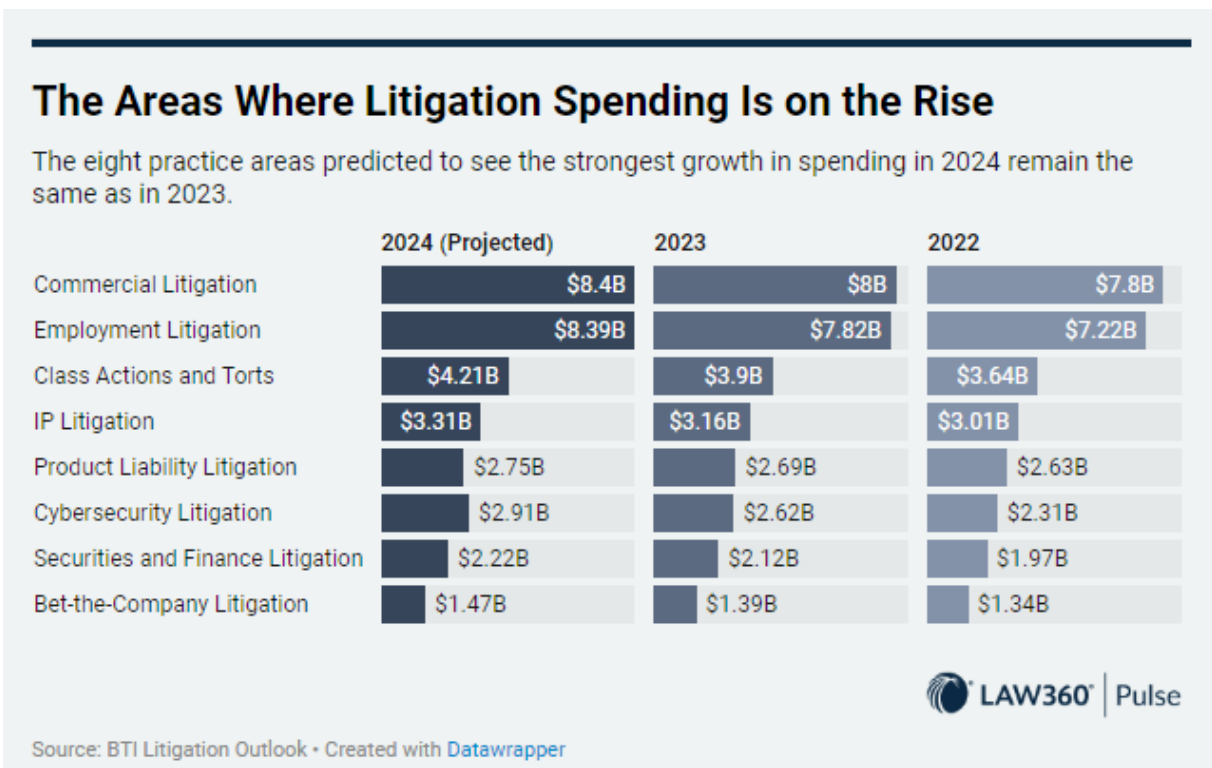
Much of companies' litigation spending next year will be geared toward resolving cases, with the number of clients expecting to seek settlements jumping to a seven-year high, according to BTI.

In fact, more than half of clients are aiming to whittle down their litigation backlogs, which have been growing in recent years, according to Rynowecer. And they are willing to spend money to resolve those cases.

"Clients are realizing that the only way to get ahead is to spend more," Rynowecer said.

But while clients may be willing to spend more money to resolve cases, they're not willing to give up their aggressive defense postures to do it, he cautioned, adding that that's a change from clients' postures not too long ago.

"If you go back seven to 10 years, clients would sometimes slack off on spending if they wanted to settle and put all their efforts into the settlement," Rynowecer explained. "But now they're doing both, because they know even though they want to settle, settlements are still harder to come by than they have been in a very long time."



That means clients are more open to giving some of their business to new firms than they have been in the past, according to the report.

Companies are looking to hire firms that can handle both aggressive defense and settlement negotiations at the same time. And they want to understand strategy more than they ever have, since now they will have two lines of attack at the same time, according to Rynowecer.

The amount of change in-house legal departments have experienced also means companies are more open to hiring new firms.

In the past three years, about 35% to 40% of corporate counsel have turned over due to retirements, job changes and other reasons, according to Rynowecer.

"So they may not have the deep knowledge and connection with the legacy law firms they inherit," he added.

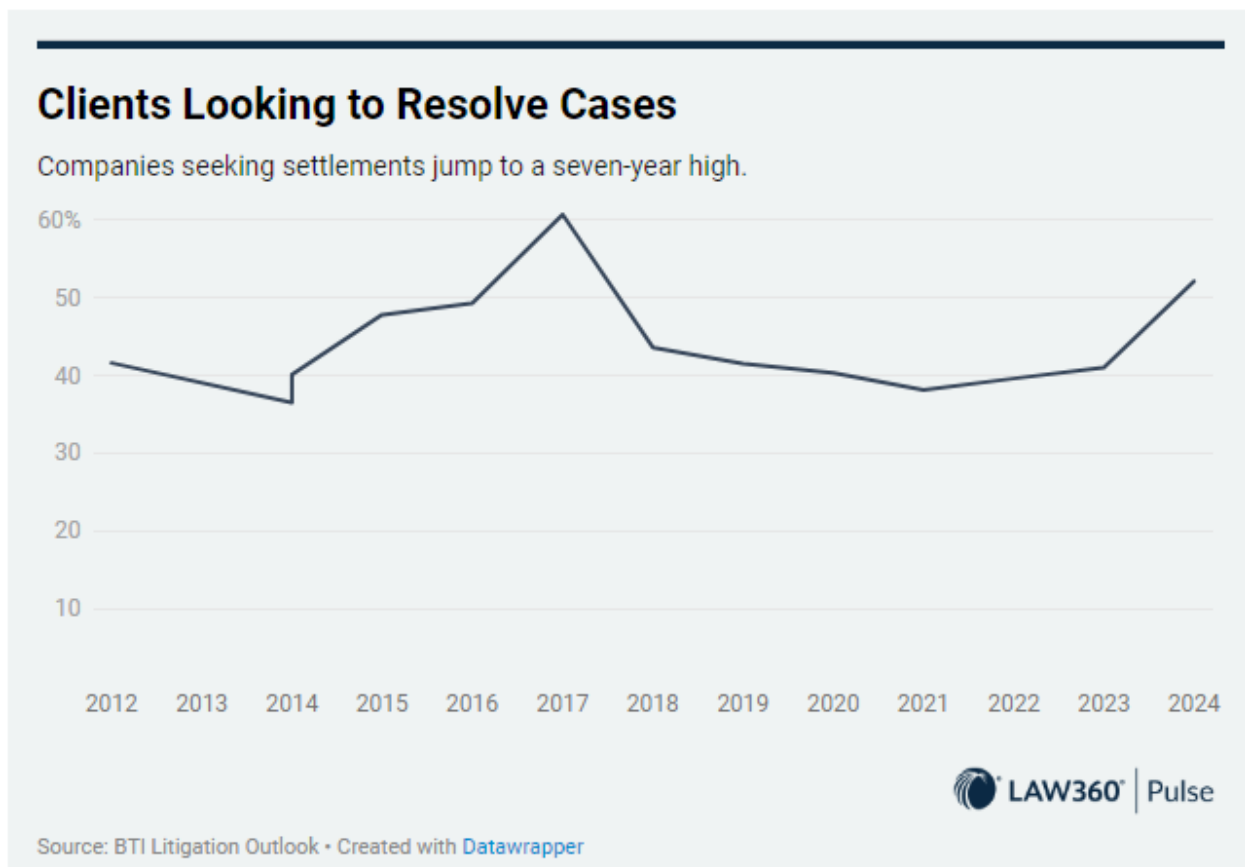
And while law firms have seen similar turnover, some of those firms also were not responsive to clients and even turned away matters during the COVID-19 pandemic, which may also push clients to look for new legal counsel, according to Rynowecer.

"Lastly, they don't have the patience or the time anymore. They have the highest workloads that they've ever had," Rynowecer said of in-house legal counsel. "And shopping for law firms is just one more way to spend your time that will not necessarily produce results."

So clients are looking for new firms in new places.

LinkedIn, for instance, is now playing an active role when it comes to clients looking for firms, with 52% of clients saying they go to LinkedIn two or three times a day, according to Rynowecer.

"And if they see a piece of thought leadership, they're going to read it. And if they're not that connected to their existing law firms, there's a relationship that might be worth developing," he said.



Law firms that want to reach those new clients will have to look to methods like that, Rynowecer said. They can't just walk in and make a pitch anymore.

"In fact, that's probably one of the least effective ways to get the business," Rynowecer said.

These dynamics are likely to make 2024 a little different from recent years, according to him.

"If you look at the last two years, clients were very much focused on, 'How are we going to manage this enormous caseload that just keeps growing like a fire hose has been unleashed?'" Rynowecer explained. "Now their thinking has shifted to, 'How do I dispose of it; how do I resolve it?'"

--Editing by Robert Rudinger.