



Employment Practices Liability Consultant (EPLiC)

An Exclusive Look Inside: The 2023 *Duane Morris Class Action Review*

By *Gerald Maatman and Jennifer Riley*

The *Duane Morris Class Action Review—2023* is a must-have resource for in-depth analysis of class actions in general and workplace litigation in particular. Authored by Gerald L. Maatman Jr. and Jennifer A. Riley, the chair and vice-chair, respectively, of the class action defense group at Duane Morris, the *Review* is widely considered “the Bible” on class action litigation and an essential desk reference for business executives, corporate counsel, and human resources professionals.

Top Class Action Developments and Settlements of 2022

The *Duane Morris Class Action Review* analyzes class action trends, decisions, and settlements in all areas impacting Corporate America. The *Review* also highlights key rulings on attorneys’ fee awards in class actions, motions granting and denying sanctions in class actions, and the top class action settlement in a myriad of substantive areas. Finally, the *Review* provides

insight as to what companies and corporate counsel can expect to see in 2023 in terms of filings by the plaintiffs’ class action bar.

In the *Review*, the class action rulings from throughout the year are analyzed and organized into 23 chapters and 4 appendixes for ease of analysis and reference. The following is a synopsis of the *Duane Morris Class Action Review*, as organized by chapters.

1. Overview of Class Action Litigation in 2022

This section summarizes the legal and procedural trends that emerged in 2022, addresses key developments in class action litigation in 2022, and assesses the implications these developments will have on litigation in 2023 and beyond for companies.

2. Antitrust Class Actions

This chapter explores the significant development of antitrust class actions and the area’s

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key rulings in 2022. It provides insight into the implications of policy changes under the Biden administration on merger guidelines, trends in class certification under Rule 23, and the increasing push from the plaintiffs' bar to recover for employment-related antitrust violations.

3. Appeals in Class Actions

Appeals in class action litigation continued to be a focus of plaintiffs and defendants in 2022. This chapter delineates the key points at which an appeal may be filed in a class action suit and surveys the key rulings in class action appeals from the past year.

4. Arbitration Issues in Class Actions

This section focuses on how recent Supreme Court decisions, particularly *Viking River Cruises, Inc. v. Moriana* and *Southwest Airlines Co. v. Saxon* have impacted the enforceability of arbitration agreements in class and collective actions.

5. CAFA Issues in Class Actions

Since it was enacted in 2005, the Class Action Fairness Act (CAFA) has been an integral part of defense strategies in class actions. In 2022, its role was no less essential. This section describes the use of the CAFA as a weapon for corporate defendants in seeking the optimal venue in which to defend class action litigation and the key CAFA rulings in each federal circuit from the past year.

6. Civil Rights Class Actions

Throughout 2022, the volume of litigation in the civil rights area was expansive. The tendency to grant class certification in these classes was high. Newer issues such as COVID-19 and homelessness led to the exploration of previously untried legal questions in this area. The trends and key rulings depicted in this chapter suggest that the same will be true in 2023.

7. Consumer Fraud Class Actions

This chapter explores the rapidly changing landscape of consumer fraud class actions, including the impact of putative classes from new industries and the procedurally unique claims that arose. Further, it breaks down the key rulings that kept the plaintiffs' and defendants' bars fighting in 2022.

8. Data Breach Class Actions

The focus of this chapter surveys the recent developments and settlements of the law data breach consumer class action litigation, including the impact of the US Supreme Court's *TransUnion LLC v. Ramirez* decision and an overview of the key rulings in data breach class actions of 2022.

9. EEOC-Initiated & Government Enforcement Litigation

The Equal Employment Opportunity Commission (EEOC), the US Department of Labor (DOL), and the US Department of Justice (DOJ) are among the most aggressive federal agencies in terms of prosecuting government enforcement litigation. This chapter focuses on EEOC litigation in 2022 and the legal issues spawned by that litigation and government enforcement actions brought by the DOJ and the DOL.

10. Employment Discrimination Class Actions

This chapter explores the continuing trend of the plaintiffs' bar to implement a refined focus in employment discrimination class actions, meaning they are likely to rest on smaller classes with "tighter" certification requests. Employment discrimination class action litigation remained a high-stakes arena in 2022.

11. ERISA Class Actions

The surge of class action litigation filed under the Employee Retirement Income Security Act

(ERISA) persisted in 2022, with class actions continuing to focus on challenging ERISA

12. FCRA Class Actions

This chapter surveys the key settlements and rulings in Fair Credit Reporting Act (FCRA) class actions, including rulings over the provision of accurate reports and standing, the FCRA “standalone” document requirement, and the FCRA employee authorization and disclosure requirements.

13. FLSA/Wage & Hour Class and Collective Actions

In 2022, the plaintiffs’ bar filed more wage and hour class and collective actions against companies than any other complex litigation. This in-depth section explores the top trends and key rulings in Fair Labor Standards Act (FLSA)/wage and hour class and collective actions from the past year.

14. Labor Class Actions

This section reviews the class action rulings from cases brought by both advocacy groups and private plaintiffs asserting violations of labor-related statutes and various constitutional-based theories and state laws in the labor context.

15. Privacy Class Actions

This chapter analyzes the key privacy class action decisions and settlements over the past year, providing companies with a one-of-its-kind resource to assess the past, present, and future of complex privacy litigation. Information privacy class actions have outpaced filings in other areas of law in terms of growth. Paired with a landscape that remains very much in flux, these factors have contributed to a wave of high-dollar-value settlements in privacy class actions last year.

16. Procedural Issues in Class Actions

This chapter analyzes the significant procedural decisions rendered in 2022 on some of the

most common and crucial issues in class actions that corporate defendants may face.

17. Product Liability & Mass Tort Class Action

This chapter analyzes the reasons that product liability cases may turn into mass tort actions or class actions and summarizes the top product liability decisions and settlements of 2022.

18. RICO Class Actions

Due to the exposure of treble damages in class actions brought under the Racketeer Influenced and Corrupt Organizations (RICO) Act, these cases can present extraordinary risks for companies. This chapter examines the key rulings and settlements in RICO actions from 2022.

19. Securities Fraud Class Actions

There are several categories of securities fraud class action decisions from 2022 that reflect significant trends in this area of litigation. This chapter explores these categories and the key rulings from the past year.

20. Settlement Approval Issues in Class Actions

This chapter explores the strategic dilemmas that plague defendants and plaintiffs with settlements on a class-wide basis. These issues and others were central in numerous court rulings on class action settlement approval issues in 2022.

21. State Court Class Actions

Whether it is between state or federal court or deciding in which particular state to file, many factors impact the decision of which venue is ideal to litigate a class action. This chapter analyzes key rulings state by state and how these decisions of where to file affected the ultimate outcome.

22. TCPA Class Actions

The Telephone Consumer Protection Act (TCPA) has long been a booming focus of consumer litigation, particularly for class actions. This chapter explores how the path to recovery and success under the TCPA became more difficult due to rulings in 2022.

23. WARN Class Actions

Class actions brought under the Worker Adjustment and Retraining Notification (WARN) Act of 1988 remain an area of key focus of skilled class action litigators in the plaintiffs' bar. Understandably, in the high-stakes arena of WARN class actions, the plaintiffs' class action bar continues to vie for substantial settlements and to secure workplace changes.

What Should Companies Expect in 2023?

Class action litigation is a staple of the American judicial system. Given the massive class action settlement figures in 2022, coupled with the ever-developing law, corporations can expect more lawsuits, expansive class theories, and an aggressive plaintiffs' bar in 2023. These conditions necessitate planning, preparation, and decision-making to position corporations to withstand and defend class action exposures. Class actions involve decisions on strategy at every turn. The positions of the parties are constantly changing, and corporate defendants must always look ahead and anticipate issues during every phase.

10 Key Trends in Class Actions during 2022

Class action litigation has rapidly grown over the past decade and entails ever-changing guideposts, new playbooks, and innovation. The *Duane Morris Class Action Review* explores 10 key trends in class actions that characterize the past year. The following is a synopsis of these trends.

Trend #1: Class Action Settlements in 2022 Redistributed Wealth at an Unprecedented Level

Aside from the Big Tobacco settlements nearly 2 decades ago, 2022 marked the most extensive set of billion-dollar class action settlements in the history of the American court system. Class actions and government enforcement lawsuits garnered more than \$71 billion in settlements, with 15 class action cases settling for more than \$1 billion. Corporations can expect that the plaintiffs' class action bar will be equally if not more aggressive in their case filings and settlement positions in 2023.

Trend #2: The US Supreme Court's Decisions in 2022 Continued To Define the Class Action Landscape

Consistent with its approach over the past several years, the Supreme Court issued three key rulings that impact the plaintiffs' bar's ability to bring and maintain class actions. Contrary to the tendency of its rulings in recent years to expand the arbitration defense and thus make it more difficult for the plaintiffs' bar to pursue claims class-wide, this past year, the US Supreme Court pulled back on the arbitration defense by narrowing its coverage.

Trend #3: The Arbitration Defense Suffered Setbacks in 2022

Of all defenses, a defendant's ability to enforce an arbitration agreement containing a class or collective action waiver may have had the greatest impact in terms of shifting the pendulum of class action litigation. Companies have enjoyed a high rate of success enforcing those agreements and using them to thwart class actions out of the gate. Given the impact of the arbitration defense, in 2023, companies may face additional hurdles as the plaintiffs' bar continues to look for workarounds.

Trend #4: The Likelihood of Class Certification in 2022 Was as Strong as Ever

In 2022, the plaintiffs' class action bar certified class actions at a high rate. Across all major types of class actions, courts issued rulings on over 360 motions to grant or deny class certification in 2022. Of these, plaintiffs obtained or maintained certification in 268 rulings, with an overall success rate of nearly 75 percent.

Trend #5: Government Enforcement in 2022 Took a Back Seat

Over the past year, the Biden administration continued to roll out changes as it aimed to expand the rights, remedies, and procedural avenues available to workers. Whereas companies continued to see pro-business rules promulgated by the Trump administration withdrawn and overwritten by the DOL and other government agencies in 2022, courts continued to impose hurdles to agency rulemaking. Enforcement activity remained steady as political appointments remain pending.

Trend #6: Privacy Class Actions Became an Intense Focus of the Plaintiffs' Class Action Bar

Privacy litigation manifested itself as the hottest area of growth in terms of activity by the plaintiffs' class action bar. While Congress has not addressed data privacy through federal legislation, many states have enacted their own laws, and 2022 saw significant state legislative activity regarding data privacy with five states preparing for new privacy laws to take effect in 2023.

Trend #7: Data Protection Issues Continued To Plague Corporate Defendants

Corporations suffered setbacks as courts disagreed over the application of the US Supreme Court's decision in *TransUnion v. Ramirez* to data breach cases. The Supreme Court decision

in *TransUnion* has not resulted in a bright line rule on standing in data breach cases, as courts continue to apply different interpretations of *TransUnion* when assessing standing.

Trend #8: Courts Continued To Grapple with Problems of Standing and Uninjured Class Members

During 2022, courts continued to grapple with the rules that govern the certification of classes that contain uninjured class members. Various cases climbed to the federal circuit level, with varying results, and the US Supreme Court once again declined to take up the issue. While 2022 saw the further development of the defense, corporate defendants are likely to see continued litigation over this issue during the upcoming year.

Trend #9: Corporate Defendants Aggressively Asserted Defenses Based on Personal Jurisdiction

In 2022, corporate defendants aggressively asserted defenses based on personal jurisdiction to fracture class and collective actions. Corporate defendants can expect that personal jurisdiction will remain a powerful defense for facing class and collective actions outside of their home states.

Trend #10: PAGA Actions Suffered Their First Setback, Work-Arounds Continued To Percolate

According to data maintained by the California Department of Industrial Relations, the number of Private Attorneys General Act (PAGA) notices filed with the California Labor and Workforce Development Agency has increased exponentially over the past 2 decades. However, the PAGA work-around suffered its first significant setback in 2022 with the US Supreme Court's highly anticipated decision in *Viking River Cruises, Inc. v. Moriana*, which addressed the arbitrability of PAGA claims in workplace arbitration programs that require individual proceedings.

The Top Settlements in Workplace Class Actions of 2022

An overview of the top ten leading settlements in workplace class action litigation reveals the massive uptick in settlement values over the past year.

Top 10 Settlements in Employment Discrimination Class Action Lawsuits

1. \$175 million: *Jock v. Sterling Jewelers, Inc.*
2. \$118 million: *Ellis v. Google, LLC.*
3. \$100 million: *McCracken v. Riot Games, Inc.*
4. \$90 million: *Rudi v. Wexner, Inc.*
5. \$31 million: *Howard v. Cook County Sheriff's Office.*
6. \$24 million: *Morgan v. U.S. Soccer Federation, Inc.*
7. \$22 million: *Haggan v. Google LLC.*
8. \$14.7 million: *Construction Laborers Pension Trust for Southern California v. CBS Corp.*
9. \$12.3 million: *DeBlock v. Speedway, Inc.*
10. \$10 million: *Doe v. NorthShore University HealthSystem.*

Top 10 Settlements in Wage and Hour Class Action Lawsuits

1. \$185 million: *Senne v. Office of the Commissioner of Baseball.*
2. \$116 million: *Liang v. State of Wash. Dep't of Social & Health Servs..*
3. \$49.5 million: *Hootselle v. Missouri Dep't of Corrections.*
4. \$42 million: *Koshman v. Multicare Health Sys.*
5. \$38.5 million: *LaRue v. Great Arrow Builders, LLC.*
6. \$35 million: *Evans v. Wal-Mart Stores Inc.*

7. \$31.8 million: *In Re Postmates Classification Cases.*
8. \$30.5 million: *Frlekin v. Apple, Inc.*
9. \$23.15 million: *Giannoulis v. DIRECTV, LLC.*
10. \$23.1 million: *Noll v. Flower Foods Inc.*

Top 10 Settlements in ERISA Class Actions

1. \$267 million: *Laurent v. PriceWaterhouse-Coopers LLP*
2. \$32.5 million: *Becker v. Wells Fargo & Co.*
3. \$16.5 million: *Godfrey v. GreatBanc Trust Co.*
4. \$15 million: *Snider v. Administrative Committee of Seventh-Seven Energy Inc.*
5. \$14 million: *Brown-Davis v. Walgreen Co.*
6. \$12.5 million: *Boley v. Universal Health Servs., Inc.*
7. \$7.5 million: *Davis v. Washington U. St. Louis.*
8. \$7 million: *Feinberg v. T. Rowe Price Group, Inc.*
9. \$3.2 million: *Soulek v. Costco Wholesale Corp.*
10. \$2 million: *Harding v. Southcoast Hosps. Groups, Inc.*

Top 10 Settlements of Government Enforcement Litigation

1. \$145 million: *Wells Fargo Co. (DOL Sept. 12, 2022)*
2. \$105 million: *U.S. Virgin Islands v. Estate of Epstein.*
3. \$46.5 million: *State of California v. Maplebear Inc.*
4. \$40 million: *United States ex rel. Simpson v. Bayer Corp.*
5. \$20 million: *New York City v. Chipotle Mexican Grill, Inc.*
6. \$18 million: *EEOC v. Activision Blizzard.*

7. \$9.3 million: *U.S. Dep't of Labor v. U.S. Med. Staffing.*
8. \$8 million: *EEOC v. Circle K Stores Inc.*
9. \$6.4 million: *United States v. Crown of Life Care, Inc.*
10. \$6.3 million: *U.S. Dep't of Labor v. Maine Oxy-Acetylene Supply Co.*

This article has provided only a brief sample of the information this comprehensive report contains. To obtain a free copy of the e-book, access it [here](#), or contact Mr. Maatman at gmaatman@duanemorris.com