

Business Litigation in California: Perplexing, Downright Exasperating

Archer Norris published its second annual California Business Litigation Report, revealing that corporate lawyers continue to view many aspects of California's business environment as perplexing, downright exasperating, and in many ways more challenging than other states.

In a release, the firm said employment laws and labor issues were found to be by far the most significant legal concern of companies doing business in California, reported by 62% of respondents. When it comes to areas in which litigating in California is more challenging than in other states, employment law and labor issues again landed in the top spot (69%), followed by environmental law and regulation (57%). The survey showed that the most-cited legal stumbling blocks also include commercial litigation, product liability, intellectual property, land use, and health care. Among out-of-state counsel specifically, regulatory compliance was repeatedly cited as a chief challenge across a wide spectrum of legal concerns.

Conducted in partnership with ALM Marketing Services, Archer Norris's survey polled general and corporate counsel with business interests in California on their opinions of the California legal climate, how they evaluate litigation matters, and how they choose outside counsel for handling these matters.

This year, Archer Norris also examined current attitudes toward hot issues such as cybersecurity, finding that anxiety about exposure to cyber risks indeed runs deep among in-house counsel, with nearly two-thirds reporting they are "very

concerned.” They are most worried about information loss and associated costs resulting from data leakage or systems attacks, damage to critical IT infrastructure, and risk arising from malware and computer viruses.

“The results of our 2016 survey make it clear the legal terrain in California continues to prove daunting not only to companies new to litigating in the state, but also to those who have been handling matters here for some time,” said Gene Blackard, Managing Partner of Archer Norris. “In order to overcome these challenges, it’s more critical than ever for companies doing business in California to have highly responsive and knowledgeable outside counsel. Archer Norris has guided hundreds of businesses through the complex litigation and transactional landscape here, with the goal of seeing our clients succeed in California long-term. With more than 100 attorneys practicing in five offices across the state, we’re exactly where our clients need us to be to best handle their diverse needs.”

The survey also yielded insights about how in-house counsel evaluate which outside California counsel is the right partner. While 55% of respondents noted the importance of a firm offering competitive rates and fees, a number of other factors were deemed more important than cost. Respondents first and foremost look for dependability and consistency (74%), followed by responsiveness, depth of experience, knowledge of the business and industry, and whether the law firm is one known for thoroughly exploring options for resolution other than going to trial.

Respondents reported spending about one-quarter of their overall legal budgets on outside counsel, and most said their budgets will stay the same or increase this year (37% and 29% respectively) compared to last. Many admit they would consider paying “premium” fees (up to 30% above the norm) to defend “bet the company” issues (23%) or legal matters where the client risks losing \$1 million or more (32%).

The previous Business Litigation Playbook white paper, which also reveals corporate counsels' greatest legal concerns within a variety of practice areas, **can be downloaded**.