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**ACC - Litigation Trends

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PRESENTATION

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Good morning, good afternoon or good evening as the case may be and welcome to this web cast co-sponsored by ACC and Fulbright and Jaworski. We are presenting today -- this is Bob Owen and I am partner with Fulbright and Jaworski and Co-head of its Litigation Group in New York, and we are presenting from New York. With me is, Edward Barilarry, Vice President and Head of Litigation for AT&T. My partner, Judy Archer, a litigation partner here at Fulbright and Jaworski in New York. Lane Cruise who is listed on the slide show as being a presenter could not present; he is a partner in our Houston office but he's in court today and was unable to participate so we will be presenting in his place.

I'm very pleased to welcome Edward Barillari. Mr. Barillari has been head of AT&T's litigation for many years and before we begin with the slide show he will give us some comments on litigation and -- Ed would you like to go ahead?

Ed Barillari - *AT&T - VP, Law*

Sure, thank you, Bob, and greetings to everyone. I -- when Bob first approached me about this I gladly accepted his invitation. But before we got stared I had done a little informal survey among colleagues to see what was on their mind in terms of the future of litigation, what to expect in the coming years, you know, looking past and seeing the significant changes, many technology driven, that has changed the face of litigation. I had a discussion with a number of people whose opinions I value. And lo and behold, two concerns came up again and again and again. I guess I wasn't surprised when I saw the results of Bob's survey which sort of reinforced what I had found out about the major concerns going forward for most people that I spoke to about litigation trends and there are two. And I will speak to them each separately but identify them now.

First and foremost people are concerned about electronic discovery. This is on the forefront of everybody's mind because it presents issues that sometimes seem overwhelming; and we will discuss those in a few seconds. The other is Sarbanes-Oxley and how the practice of litigation is melding with the practice of accounting and there's new relationships being formed between lawyers and accountants and chief financial organization folks that heretofore did not exist, and it's really changing the face of litigation, especially in house corporate litigation because it's become the bane of our existence in the recent past.

Let me just say a few things quickly abut electronic discovery because the burdens that places on attorneys across the board is significant and the larger the company and the more people you have the more onerous it becomes. Our little rule of thumb is that in a given year an individual -- one individual -- will accumulate somewhere in the neighborhood of 20 to 25,000 documents; and that's a lot of documents. And when you multiply that times thousands of employees it becomes quite a task. And over the years we have worked very closely with our technology partners to find new and better ways to not only preserve those documents but to make sure they're vetted at, in appropriate circumstances and at time intervals and also when a search has to be performed to do that as efficiently and as expeditiously as possible.

Having said that, the electronic discovery is even more of a concern because it just opens up opportunities for people to correspond in ways they never did before. Electronic discovery tends to be much more informal, people don't read and edit it the way they use to and they certainly send them copies of whatever they have to say to more and more people than they

would have previously. In addition a -- and this is sort of related to the first point about not editing --is that people tend to write now emotionally and whereas in years past if you put together a letter or a note or memo you would read it and maybe, calm yourself a bit before writing it but that's not the case anymore.

People, the electronic materials you see now a days are often laced with profanities, and cryptic messages, and can really be taken out of context easily by a skilled adversary. So all those things add up to an ongoing problem. And the bigger problem seems to be in how you save this stuff, how you store it, what obligations you have to do that, and how you go about trying to find it because it's always the case that no matter how diligent your effort is in to collect these documents and to find them that somewhere down the road you will have missed something. And what we have found is that it really serves you well to make certain when you do these document discoveries that you have appropriate hold letters sent out initially.

And -- and this is important, during the course of the litigation -- periodically send out new hold letters to make sure that you can if you have to demonstrate to a court or an adversary that you really went above and beyond to try and cull out any document that could possibly exist and is arguably relevant or responsive to any request. So those things really I think keep some of the litigation people that I talked to up at night and it's going to be an ongoing battle until there is some, I guess, standard on how these documents are collected and produced.

And lastly you really need to have, any company really needs to have a records retention policy that includes electronic documents because people are packrats and they tend to hold onto that stuff and you'd be surprised how much stuff is really held onto. And you can't solve that problem I know, but you can go about making it better and having periodic file cleansings would go a long way in helping that when they're appropriate.

Now I'm going to jump over to the Sarbanes-Oxley issue that I identified because it seems more and more you're performing analysis to determine if a contingent liability is appropriate, and also to determine that the processes you have in place are adequate to produce adequate information for disclosure purposes and also up front disclosures of litigation have become more important. And I find myself working with the accounts and with our corporate secretary tenfold more than I had in the past and these obligations, when you really stop and look to see if the procedures you have put in place work, you really understand that when you ask the difficult questions and go into detail that sometimes you really don't have a plausible explanation for some of the positions you may have taken on some of these things and it really serves you well to go through that process and to have answers to questions before hand.

And in my individual case I've been involved in at least a dozen process reviews since Sarbanes-Oxley has come into play and those processes really help you understand where you're falling short and how reliable the processes you have in place are in terms of providing accurate information that has to be used for disclosure purposes and for purposes of establishing contingent liabilities in the cases that you need to. So there is a real partnering now with financial and legal as they -- both disciplines struggle to make certain that what they're doing is appropriate and to prevent and protect against any claims in the future that maybe you haven't done as good a job as you should have in reporting contingent lost liabilities and to disclose pertinent and relevant information in appropriate disclosures.

And I'm going to leave it at that so that we can get on with the program but those are just my thoughts on two areas that I think are on everybody's plate and are areas that should be looked into and thought about quite a bit I think as litigation trends in the future dictate that they are. Bob, that's it for me. I'll pass it back to you, I guess.

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Thank you very much Ed, although you will be with us though out the course of the broadcast today, and I'm sure you may have some comments that you may want to make as we go through the slides. First all of you are logged into the proper place on the web and I'm told that you will need to advance the slides yourself as we go through the slides. We will be queuing you to the slide number that we will be discussing so there shouldn't be any confusion. One other housekeeping detail, if you have

questions that you would like us to address, if there's time at the end of the web cast, please email the questions to webcast@Fulbright.com and we will try to get to your question. We already have one in the queue which we will try to address at the end of the hour. If you wish to receive a copy of the slides you can also email webcast@Fulbright .com at the end of the presentation and we will get you that. And if you want a copy of our brochure which lists the findings you can go to the Fulbright Web site and follow the links there.

So moving from the title page to slide number 2, what we will cover in the next 30 to 40 minutes are the following topics: we are going to explain the survey methodology, we are going to talk a little bit about the case load of our respondents, we re going to be dealing with litigation concerns and costs, and certain issues related to litigation management. Judy will pick up with the next four bullet points covering selection of council and how big a factor a firms diversity is in that process, how litigation departments measure their own success and how they are measured by their management. We also did a survey, as you will soon learn some more details about, of UK respondents we are going to talk a little bit about that, and then the final substantive point will be class actions and international arbitrations.

On slide four, if you'll go by the title page on slide three and go to page four. Let me answer the question, "What is different this year?" This was the second year in a row that Fulbright has done a litigation trend survey. The original genesis of the survey was a desire on our part to look around the corner and to prepare for what might be coming and what our clients might be bringing to us as litigation needs and last year our respondents gave us a number of excellent ideas for inclusion in this years survey. And so what we've done is we've added some questions on litigation costs and budgets which we will cover today. We've added a question or two on class actions to pick up on the passage of the class action term effect by the congress earlier this year. And we've added questions about international arbitration and diversity.

Most interestingly, I think, we added United Kingdom component this year because we've recently expanded our London office to add a very excellent, disputes practice, and we wanted to see how litigation in the United Kingdom compared to litigation in the United States and we will cover that as we go through the program. By the way we are soliciting suggestions for next year's survey if any of our listeners have ideas, concerns, anything they'd like us to survey on next year, please let us know and we will try to include them. We got some excellent suggestions from last year's respondents and from people who attended our presentations.

Onto slide 5, this covers our survey methodology. We obtained responses from 350 individuals. This makes it, we believe, the largest survey of litigation trends of its kind. Most of our respondents were general counsel themselves or chief legal counsel or if not that then they were head of litigation. We are told by survey experts that in order to be statistically valid these surveys should have at least 150 respondents, we have more than doubled that and we're finding as we mine the results and discuss them and compare them to other survey results, that in fact the statistics we are developing and have developed appear to correlate well to other statistics that we've seen.

Of the 350 individuals who responded, 50 were in the United Kingdom, and we believe that's representative and it gives us enough respondents from which we can draw some conclusions. We had a very good range of businesses, of company sizes and of locations. And if you go to slide number 6 this breaks out for you the size of our respondents. The median size of our respondents measured in gross revenues was $523 million. In the under $100 million revenue category, which today we'll call the smaller companies, we had 89 respondents, they comprised of 25% of our survey population. The middle size companies between $100 million and $1 billion in revenues, we had 46% of our respondents or approximately 163 in numbers. And of the large companies we had 102 respondents for 29% of our respondent base. 40% of our respondents are publicly held and of those 60% are listed on the New York Stock Exchange just to give you an idea.

If you go to slide 7, this shows the breakdown among the various industries represented by our respondents. Manufacturing was the largest industry represented with 16%. Then on -- all others category comes in second. Finance and banking, basically financial services, came in second at 11%. Energy and health care were tied for 3rd and 4th place at 10%. Technology and communications tied with retail and wholesale business for 5th & 6th places. Engineering and construction came in at 7%, insurance, non profit, education and property.

So if we go to slide number 9, we were interested in discerning, if we could, what the average case load was on the dockets of our corporate respondents. All the companies averaged 37 law suits and that struck us as a very low number so we did a little more analysis of it. We looked at the break out for a billion dollar plus companies and if you look at the larger companies the docket there increases to an average of 140 law suits; still that strikes us as low. Ed how many cases are on your docket at AT&T at any one time?

Ed Barillari - *AT&T - VP, Law*

Well, currently we have, without counting labor arbitrations and the like we have about 1,400. And that's fairly steady, I mean we may dip to 1,200 or go up to 1,500, but that's a fairly steady number in that neighborhood

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Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Okay. We, obviously our respondents span many industries and many business and some are more litigious than others. And so Ed's company is a good example of probably the high end of cases. But on the other hand if you look at the third bullet point we found that 13% of our respondents had no litigations at all because 87% of our respondents said that they did have cases pending, and it is still a curious fact as to who those 13% are and I'm hoping we can get some analysis of that figure at some point. 20% of our respondents face an average case load of between 50 and 100 litigation matters.

Of the largest companies, if you go to slide 10, we analyzed the data and we determined that again 12% of our $1 billion-plus respondents reported being free of litigation, so that's a very interesting fact to us. In the first survey, if you got to slide 11, we were interested in the first year to find out how many of our corporate respondents ever initiated actions themselves. The stereotype is that corporations are always playing defense and do not ever use the legal systems as plaintiffs or as petitioners, but in fact last year we asked the question, "Do you ever serve as plaintiff?" And 88% of the respondents said yes they did.

And so what we tried to ask that a little more detailed this year and that is we said; "How many of you have instituted a law suit during the past year?" And of our $1 billion-plus companies 74% of them reported filing a case as a plaintiff petitioner in the previous 12 months. And our respondents -- those that we surveyed initiated an average of 11 lawsuits and two arbitrations if you average in everyone, and that obviously includes the companies that don't have any litigation at all, so there is a very active presence on the plaintiff side by the companies that we surveyed.

If you go to the next slide, we have a bar chart and this breaks out the types of cases that our respondents had pending. 42% reported having contract cases as being the most numerous case on their docket; 38% of our respondents said that labor and employment was the most numerous category case; personal injury came in at 19%; product liability at 14%; and intellectual property and patterns came in at 13%.

If you go to slide 13, we asked -- we hear a lot about the disappearing trial and during my lifetime as a litigator, which has now spanned 32 years, the number of matters going trial in the Federal System had plummeted from, I think between 7,000 and 8,000 to more like maybe 1,000 or 2,000 trials per year in the Untied States. So we asked our respondents, "Do you go to trial?" And more than half of our respondents had a trial or arbitration hearing in the previous 12 months.

And if go to slide 14 we break it out by company size and this question was "How often were you actually in an arbitration hearing last year?" The small companies averaged 2.8 times; the middle sized companies, the $100 million to $1 billion companies, said they were in trial or in an arbitration 7.1 times on average; and the larger companies reported being in arbitrations 14 times in the last year. Ed, how does that compare to AT&T's experience?

Ed Barillari - *AT&T - VP, Law*

Well, again, let's set aside labor arbitrations. I really won't count them because we have an enormous number -- we have hundreds in docket. But excepting those, I would say we've had about five or six trials and probably close to eight to 12 arbitrations during the last year. A good portion of those arbitrations, I should point out were, I don't want to say insignificant, but they were insignificant in terms of value. We had about four to five really significant arbitrations over significant matters. So I think those numbers are fairly accurate. We do expect a number of trials each year.

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Thank you. We asked our respondents, and if you go slide 15, you'll see the slide on this, about their settlement practices. And the wording of this isn't the clearest but it is "What percentage of companies said no cases were settled before trial?" What this means is that in the smaller companies, 25% of the respondents said none of their cases were settled before trial.

We looked at the data and we calculated that another 25% said that they settled all of their matters and didn't take anything to trial. In the middle-sized companies, 4% said none of the cases were settled before trial, whereas 13% settled all. And in the larger companies, only 2% said they never settled before trial and 3% of the respondents in the larger category said that they settled all of the matters that came up in the previous 12 months.

In the New England/New York area we had -- we broke it down regionally and all I have right here are the figures for the Northeast and for New York. But 26% said that they settled none of the matters and 9% said they settled all. Regionally, that's the lowest percentage in the United States.

One of the things that we asked this year, if you go to slide 17, was about litigation costs. One of our respondents last year suggested that it would be interesting to know what percent of companies' gross revenues are spent on legal costs. And so we asked the question and we found out that of the larger companies, 10% of the respondents spent between 2 and 5% of gross revenues on legal costs, which is, to our way of thinking, an enormous amount of money. But even more surprisingly, 8% of the $1 billion companies spent over 5% of their gross revenues on legal costs.

We realize that by the wording of the question, it might have been that people confused legal costs for -- to the cost of settlements and judgments as well. But even at that, this is an enormous figure, that 8% of the larger companies spent over 5% on their legal costs. Most of our respondents reported spending 1% of their gross revenues on their legal budget.

Of that percentage, we asked them, "Well, how much of your legal budget is for litigation?" If you go to slide 18, 29% was the median amount of the total legal budget allotted for litigation; 32% of the larger companies spent between 20 and 50% of their legal budget on litigation; and 16% of the $1 billion-plus companies spent over 50% of their legal budget on litigation.

Move on to litigation concerns, and if you go to slide 20, we asked a relatively general question because we wanted open-ended answers, "What are the top areas of litigation concerns for the future regardless of the company's size?" And for most companies, as was the case last year, contracts and labor and employment claims came in as the biggest litigation concern. Now, typically labor and employment claims may not be the largest exposure claims, but it may be that their numerosity makes them a concern for companies. And it may be that in some places where employers are subject to wage and hour litigations that the exposure there is, in fact, a big concern. But these are the same two areas that we discovered in the first year survey, so there was not a big shift. And the concerns vary among the industries and by size of company.

We asked our respondents, "In the future what are you most worried about?" And broken down by industries, the manufacturing sector is most concerned in the future about labor and employment claims; the energy respondents were most concerned about contracts claims and -- at 39%; 28% of our energy respondents were concerned about environmental and toxic torts. In the healthcare sector, the area of the greatest concern was professorial services. Presumably that refers to malpractice.

Retail/wholesale, those respondents were most concerned by far by about labor and employment. The insurance respondents were most concerned, not surprisingly, about insurance claims. The text and communications companies, they had two chief concerns. One was labor and employment and one was IP and patents and then finance contracts. And finally in real estate, 31% of the respondents were concerned about environmental and toxic tort. That was the most frequently names concern.

We asked them also, and this is not on a slide but I thought this was interesting and I thought we might put this in here, "What types of litigation matters in the last year had the greatest increase in risk from previous years?" And the larger companies, the concerns in descending order were contracts, labor and employment, environmental and toxic tort, IP and patents, and class actions. Ed, what was the biggest increase in risk for you at AT&T in the last year?

Ed Barillari - *AT&T - VP, Law*

Well, it's hard to say the last year. What I would say, though, there has been a clear increase in security actions in the last few years. And they have taken up a significant amount of time, expense and effort. Now, that seems to have lessened recently, but that's been the biggest jump in the recent past on our radar screen. And a lot of that had to do, I guess, with the bubble burst and the economic downfall of years past as security lawyers catch up with the market. But other than that, the only other significant rise I think I've seen is in a lot of consumer-based class actions. Again, they seem to be on the rise, often with the backing of various state attorneys general. But those two areas would be the most significant in my mind.

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Thank you. If you go to slide 21, you will see a slide headed Top Litigation Concerns. And we asked them, "What's the biggest litigation related burden that did not exist two or three years ago?" And this was not rehearsed, but you'll see that the two points that emerged from the survey were the same two points that Ed Barillari mentioned in his opening remarks. For the smaller companies, those under 100 million in revenues, our respondents said that increased regulations, Sarbanes-Oxley and tougher requirements for securities filings were their biggest burden related to litigation that didn't exist two or three years ago. For the larger companies, those with over 100 million in revenues and up, e-discovery was recited as the top new litigation-related burden.

Because e-discovery has become such an enormous part of litigation in the last couple of years and because our firm has a practice group devoted to e-discovery and information management, we took the liberty of asking the question of our respondents, "How many of you have record retention policies and how many of you have litigation hold policies?"

If you go to slide 22, 80% of our respondents had records retention policies. Those are policies that govern the time periods during which particular categories of documents will be retained before they're destroyed. 75% of the respondents had litigation hold policies. These are policies that, as many of you will no doubt know, give a process for notifying people within the company that litigation is reasonably anticipated or has actually begun and they should save all information related to the subject matter of the litigation.

So 25%, as you can see, of the companies don't have litigation hold policies. I guess some of our respondents don't have litigation at all, but still there's a segment of companies that don't have a process. And in these days of Poster Child cases like Morgan Stanley, like Zubelec(ph) versus UBS, like Frank Petrone (ph) for CSFB who faces a jail sentence for sending out an email to his colleagues that it's time to clean up those files, litigation hold is a serious area and it's something that you need to give attention to. 24% of our smaller respondents had no records retention policies and interestingly, 15% of the larger companies had no records retention policies.

The next slide, 23, is a slide that illustrates graphically how many companies had litigation hold procedures in place and you can see that 36% of the smaller companies didn't, 16% of the middle sized companies and 19% of the largest companies had no litigation hold policies in place.

The next slide, 24, is not, strictly speaking, a report on what our survey found, but it is a little free extra and it's a listing of the three concerns that litigation hold polices should address. And number one, it's a process that's difficult to manage. You have to ensure that the recipients received them, read them and complied. And it is important for companies these days to be able to demonstrate a year or two down the road when faced with exfoliation (ph) motion that they competently, diligently and reasonably executed their litigation hold process and that they can, therefore, not be held to have exfoliated evidence.

The second most vexing area in litigation hold is backup tapes. It is very important to understand the technology of backup tapes. It's very important to know when they need to be accessed and when they cannot be accessed because the suspension of backup tape rotation is an enormously expensive process and complicated and it generates what is, in the end, probably an enormous amount of unusable information. So there's a lot of money being spent in some cases to suspend the rotation of backup tapes that will not, for all practical purposes, contribute anything to the litigation.

And the third concern in this area is what to do about records held by third parties. Rule 34 makes discoverable -- makes us responsible for producing documents in our possession, custody or control and if we control documents held by third parties, there may be an obligation to send a Litigation Hold Notice and ensure that evidence is not exfoliated. A very difficult issue, it is unclear right now where the third party question will come out. But it's something that all of us need to remain aware of.

That's the end of the portion of the slides that I planned to present and what I'll do now is turn the microphone over to Judy Archer. Judy is a litigation partner in Fulbright's New York office. Prior to joining Fulbright in January of this year she was Senior Attorney at AT&T and worked for our guest speaker Ed Barillari. So she's actually well situated to comment on some of these things because she's both been inside a private law firm and inside a major client firm. So, Judy, take it away. Thank you.

Judy Archer - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Thanks, Bob. Good afternoon, everyone. Turning to slide 26, we asked our respondents about their litigation management and how many corporate counsel they use in-house to manage their litigation.

We found that 92% of corporate law departments had at least one litigation in-house counsel. In $1 billion-plus companies there's an average of 10 lawyers managing litigation. As far as industries went, we found that technology companies had the most counsel managing litigation at an average of nine, while real estate companies on average had the least with two.

We also asked them about their use of outside law firms, moving on to slide 27, how many outside law firms a corporation generally use.

16% of the companies who responded who were based in the U.S. use an average of four to five firms. 30% of the $1 billion companies rely on more than 20. And overall, 62% of our respondents have outside law firms handle all of their litigation.

We also asked our respondents about some factors in selecting outside law firms. We asked them if diversity mattered in that selection process.

40% of the largest companies that we surveyed, the $1 billion companies, said that diversity is an important factor in selecting outside counsel for litigation matters. When you look at the overall figure, it's 20%, including the medium size and smaller companies. 16% of the largest companies have written diversity policies that apply to outside counsel and we also found that 30% of those companies have had a dialog with their outside counsel law firms about their diversity efforts. In terms of the industries, most likely to have written policies, we found that insurance and healthcare companies were the two highest at 20% and 19%.

One of the themes that we found throughout the survey was the concern over cost containment and along with the issues about percentage of cost in terms of litigation budgets, we asked what percentage of companies require outside counsel to submit litigation budgets for their cases.

35% of U.S. companies responded that they did require it, which, personally having been an in-house counsel, I thought that was a fairly low number. At AT&T we required every case to have a budget fairly early on. The energy companies that we surveyed had the largest percentage that require outside counsel litigation budgets for all cases at 45%, followed by manufacturing and technology and communications companies at 42% each.

Moving on to slide 30, we asked our respondents how they measure success, what does that mean to them? The general counsel of a $1 billion-plus California financial institution stated that keeping matters that go to litigation to a very low number, plus mentoring the next generation of lawyers and business leaders is how he's measured success. The litigation director of a $1 billion-plus information technology company in Arizona said that it's how well the legal department keeps the company -- helps the company advance in its desired direction as well as implementing cost effective solutions. And the general counsel of a large Texas manufacturer said that he is -- his success is measured by how he performs his role as Chief Legal Strategist to the Board and the company, including protecting the assets and cost effective delivery of appropriate legal services. As you can see, cost comes up fairly frequently.

We asked those in-house companies, and turning now to slide 32, how they measure law departments' success. And we first focused, on the slides, on the $1 billion-plus companies. They said -- 50% of those companies said that the top measure of success for them was results, 39% said the top measure was cost efficiency, 17% said meeting goals, 9% said avoiding trial, and another 9% said client feedback.

Now, when we looked at the medium sized companies, the 100 million to 999 million, the results were fairly consistent. 47% said results were the top measure of success, 36% said cost efficiency and 18% said avoid trials.

When we look, however, at the under $100 million companies, 57% of those companies pegged results as the top measure of success, while only 18% said cost efficiency, and 20% said avoiding trial. So apparently our smaller companies are more intent on avoiding trial and less concerned overall in terms of the cost efficiency of their outside counsel.

One of the other factors that we ask about, moving onto slide 33, was whether the time to resolution of a matter was factored in, in measuring success and litigation by our respondents. 45% of U.S. companies surveyed said that they sometimes track the time to resolution, while 20% say they always track it. That was never something that we did at AT&T. That was never a factor, in the least, in how we measured success.

The specific matters are broken out on slide 34 in terms of the average time to resolution. For example, personal injury cases in the U.S. had the highest average time at slightly over 350. Contracts, regulatory and other civil had the lowest in under 150 days. We also found that estimates of average days to resolution were higher in U.S. companies across the board than the UK companies surveyed. I think you can see by the bar chart - hopefully, this is clear, that the UK bars in blue are significantly lower to lead us to about 30%.

Since we've focused more this year on the UK and the litigation trends there, we thought we would also spend some time today talking about the differences. Moving onto slide 36. The - one of the differences was that on an average UK company surveyed had 32 pending litigation matters compared to a U.S. average of 38. However, when we looked at the UK companies with revenues over a billion collars, they had more lawsuits than similarly situated U.S. companies. We saw earlier that contract matters were the highest percentage in the U.S. In the UK companies, the most numerous types of litigation was labor and employment at 30% followed by contracts at 28% and then product liability at 26%.

Moving onto slide 37, we asked the UK respondents about the impact of Wolf (ph) reform on costs prior to trial or arbitration proceedings. And those reforms are -- essentially require UK companies to front-load their investigations and I believe the hope

was that it would lead to a more efficient litigation system and less cost. As we can see, the UK companies actually believe that those reforms have increased their costs -- 39% of the UK respondents have said that. 12% said that the Wolf reforms led to a decrease in costs, while 27% said they had no effect. We also found that litigation hold procedures are less common in the UK than they are in the United States. 62% of the UK companies said they had litigation hold procedures as compared to 76% in the U.S.

We talked a bit earlier about the speeds being resolved faster in the UK. And as I said, on an average - and we're on slide 38 at this point, I'm sorry - cases are resolved 30 to 40% faster in the UK versus the U.S. UK companies were almost twice as likely as U.S. companies to settle all of their matters before trial or arbitration, which may contribute to that faster resolution. In terms of cost containment, UK companies, at 56% were more likely to always require a budget from outside counsel than their U.S. counterparts.

Moving onto slide 39, we asked our UK respondents how much they depended on in-house litigation teams. And they generally, on an average, depended more heavily on in-house litigation lawyers than their U.S. counterparts. For example, UK companies had an average of 8.3 lawyers, while U.S. companies had an average of 3.7 lawyers. In terms of the average matters, however, each UK in-house lawyer handled an average of 3.9 litigation matters, while each U.S. in-house lawyer handled an average of 10.2. Although this is not on a slide, I thought it was interesting that, when we asked the UK companies how they measured success, 28% put results as the top measure. Only 3% said cost efficiency as opposed to 29% in the United States. We thought that was a significant difference.

Moving onto slide 40, we asked our respondents, generally, about class action. We determined that the industries that had the highest incidence of class actions last year was manufacturing at 30%, followed by real estate at 20%. Energy and financials came in at 19% and technology and communications came in at 17%. Three years ago, healthcare and energy companies had the largest number of class actions. So, that is somewhat of a shift. We found that size was the most significant determinant of the likelihood of having a class action filed against our respondents. Whereas only five of the smallest companies reported having class actions filed against them this year - I'm sorry, last year - 38% of the largest companies had class action.

Moving onto slide 41, trying to look at future trends. Our respondents, by and large, 75% believed that the number of class actions would remain the same in the future. 16% believe that they would increase. 9% believed that they would decrease. And when we asked about the top area of class actions, our respondents told us that, for the past three years and for the expected future, the largest subject matter area that their class actions fell into was the employment and labor area.

Moving onto slide 42, one of our questions was what impact the new Class Action Fairness Act would have. 59% of our corporate counsel who responded believed that there would be no impact on their company's liability as a result of the Act. Almost half of the respondents believed that the Act would have no impact on costs in the United States. And a quarter believed that it would actually lead to decreased litigation costs.

Moving onto slide 43, in our survey last year, it shows that arbitration and ADR was the second most mentioned trend likely to increase in the future. So, this year, we focused a little more on our respondent's experience, especially with international arbitration. We asked how many corporations reported having international arbitrations last year and 18% of the largest companies reported at least four to 10 arbitrations.

We also wanted to find out what rules were preferred in international arbitration and, in the U.S., 65% of our respondents preferred the AAA or the ICDR, the International Center for Dispute Resolution rules, while in the UK, 67% of those respondents preferred the ICC rules. Other rules that were mentioned in decreasing percentages were those at the London Court of International Arbitration, the CPR institute, ICSID rules, UNICTRAL rules and WIPO.

Going to slide 45, we asked about the most frequently used venues for international arbitration and we found that the U.S. companies preferred New York. 33% of U.S. companies preferred New York as their primary venue, while UK companies - 50%

of those - preferred London. It also was interesting that 21% of U.S. companies preferred London as a forum. And that brings my portion of this to a conclusion and I'll turn it back to Bob.

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Thanks, Judy. Slide 46 is just an excerpt from some of the verbatim comments that received from our survey respondents. In many portions of our survey, we asked people to comment and we extracted a few of these here. What things do you not want to hear from your law firm? That was literally one of our questions. And some of the answers were it's going to cost more. That's the way we've always done it. We've - actually, the actual verbatim was we've mis-located a document. Surprise. And I'm unavailable to take your call at the present time. Ed, what things did you not want to hear from your law firms as head of litigation at AT&T?

Ed Barillari - *AT&T - VP, Law*

Well, certainly, I told you so was on top of the list. No, what - I think some of the ones you've just identified are the ones. I think more and more, as time goes on and you get more financial pressure from clients, it's really incumbent upon an in-house team to try and track, control and predict expenses as best they can. I've found in my experience that most senior management isn't as concerned of the cost of something as much as they are concerned about the surprise of the cost. If you've got a meaty litigation that's going to cost some money, you really have to do a good job and give an expectation as to what the cost is going to be over time. The last thing you want to do is to surprise a client with a prediction or an estimate of a budget that turns out to be way off.

So, one thing we work hard with outside counsel on is to make sure are budgets are accurate and complete. And I really, really am disappointed when something comes back and there's an unexpected expense or something is going to cost more than it should. And that happens from time to time and that's expected. But when it could have been avoided, that's what really rankles me. And that's what I try to guard against, both for me and for outside counsel.

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

What's the best way for an outside firm who gets a draft bill at the end of the month that is all out of expectation, both your expectation and their expectation, what's the best way for them to handle it with someone in your position? If they go through it and they see that all of the work was valuable and advanced the cause, what should they do --

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Ed Barillari - *AT&T - VP, Law*

Well, first of all, that should never happen because there should be communication while it's happening. If it does happen, I think the best thing they can do to say is we've outspent our budget by a significant amount. But because you're a valuable client, we're going to eat it. But quite frankly, I don't think that should ever happen. No one should call me at the end of a billing period and say the costs were higher than expected. That is something that should be shared as it's happening. And I think the best way to do that is to make sure when you - and that's incumbent upon you when you're managing a case or handling a case for a client to make sure that they understand that the expectations are being met. And if they're not being met, let's put the flag up now and say, hey, there's going to be problem here. This has come up and it's going to cost more than we thought.

And I've got to say, I think, and Judy could probably comment on this, that more often than not, that's the way it happens. You get a call and there is a discussion that things are going to be a little more extensive or something has taken a turn for the worse or whatever. But that's something that should be shared up front, not after the fact.

Judy Archer - *Fulbright & Jaworski L.L.P. - Litigation Partner*

I would say and this was certainly true at AT&T and I think is a big benefit to having an in-house litigation counsel group, that when your lawyers are involved and stay on top of their cases, there will not likely be that many significant surprises. AT&T has a very experienced group of litigators and they know, as they are talking to their outside counsel and being asked questions or asked to collect documents or asked to review papers, what's going on and probably will have a sense of whether something is going over budget or it's going to be more expensive than anticipated.

And so, they're - I'm not sure that I've ever had much of a surprise in terms of how much a bill was when it came in because it's something you know as you go along because you know the tasks that are happening and how the case is progressing and whether or not you're consistent with the budget that was given in the beginning.

QUESTIONS AND ANSWERS

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Thanks Judy and Ed. We have a couple of questions in the queue. One questioner, Ed, asked you to repeat the number of documents that you estimated are generated by an individual. You said that --

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Ed Barillari - *AT&T - VP, Law*

Yes. When we conduct office searches and go into someone's electronic files, we find, normally, a person has, on average, 20 to 25.000 documents - not pages - documents in their electronic files.

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Okay. The same questioner asked what was our largest respondent because there was a suggestion that, with the average number of cases pending, there must have been a number of small companies. In fact, our largest respondent was a $90 billion company. And 46 of our respondents were $2 billion in revenues or more. Eleven of the respondents were over $10 billion in revenues. And 128 of the respondents didn't give their revenue, so we don't know whether they were big or small.

Another questioner is asking to - for us to comment on the trends we're seeing of industry to have been losing in the U.S. courthouse - doctors, product manufactures and product liability cases, the credit card industry, to name a few. Do you see the trend, Ed or Judy, in terms of seeking relief from state legislatures or the Congress in the form of tort reform or bankruptcy law changes to curb litigation? Do you have any comments on whether you think that trend will continue?

Ed Barillari - *AT&T - VP, Law*

Well, I think it will, but I really don't think that those reforms have been workable. Let's - school's not out yet on the Class Action legislation that was recently passed. I mean, I really don't understand yet how this remand issue is going to work. If appellate courts are going to give us a decision in 60 days or just let that 60 days pass. I think a lot needs to be said yet on some of these things. For the most part, lawyers are going to find ways to - or loopholes and I just don't think that legislation is going to be helpful until someone is serious about it. So, I'm not a fan of legislation. I don't think it works. And -- I don't know if that answers your question, but that's the best I can give you. I just don't see how it will advance the ball very much.

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

We have a couple of other questions, but we really -- we're coming up to 1:00, I think. Several of the questions have made some really excellent suggestion for next year's survey, I thank our participants for that. I'd like to remind everybody that if you want a copy of the slides, go to - send us an e-mail at webcast@fulbright.com. If you want a copy of our brochure, you can download it from fulbright.com. You can get a copy of the press release that we published for both the U.S. and the UK from the same site - www.fulbright.com. And if - we had one question about litigation hold policies for smaller companies, I'll try to be responsive to that myself offline.

But thank you all for listening in today. We appreciate your participation and your support. Judy, thank you for helping out. And Ed Barillari, thank you very much for coming over and helping today.

Judy Archer - *Fulbright & Jaworski L.L.P. - Litigation Partner*

Thanks, Bob.

Bob Owen - *Fulbright & Jaworski L.L.P. - Litigation Partner*

I think that's it. Bye-bye, everybody.
