



PROGRAM MATERIALS

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Key Trends Defining Class Action Litigation In 2026

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LIVE CLE WEBINAR

Key Trends Defining Class Action Litigation In 2026

Gerald L. Maatman

Celesq and CeriFi LegalEdge
August 2026

DuaneMorris®



TODAY'S SPEAKER



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TODAY'S KEY TOPICS

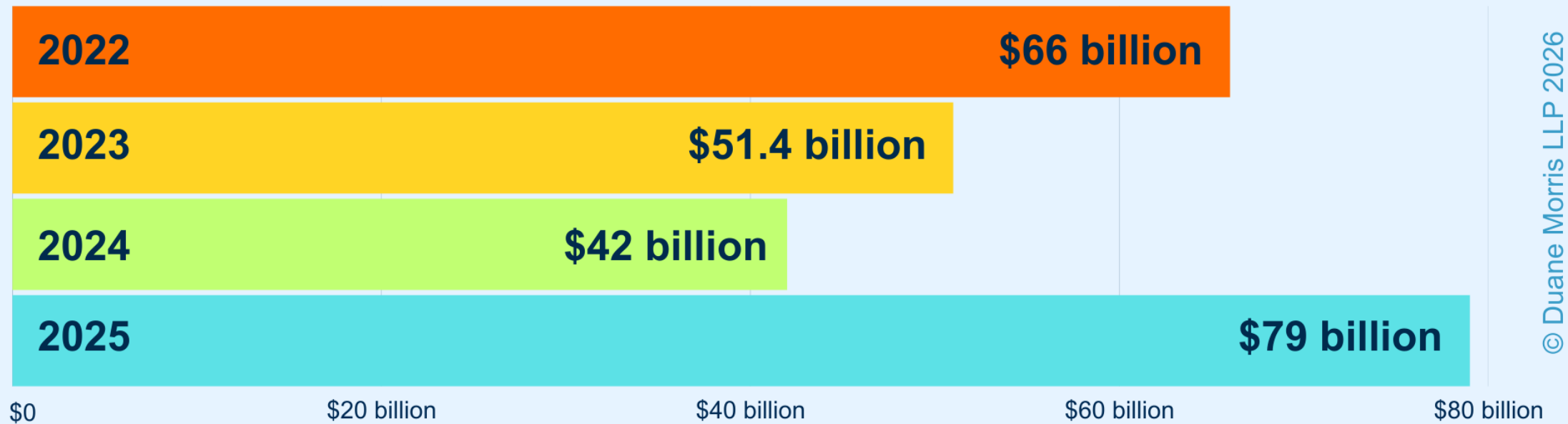
- Trends In Filings, Certifications, And Settlements
- Challenges To The Arbitration Defense
- Emerging Areas Of Litigation
- Circuit Splits Shaping The Litigation Landscape



Key Trends In Flings, Certification, And Settlements

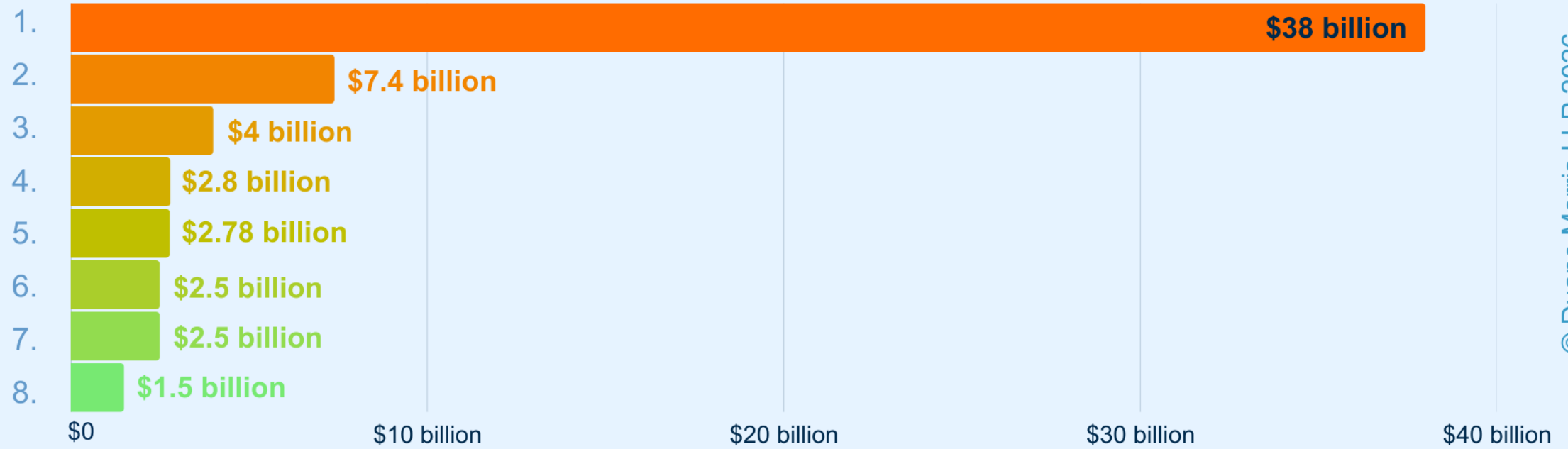
Settlement Numbers Break \$79 Billion

Top Class Action Settlements By Year



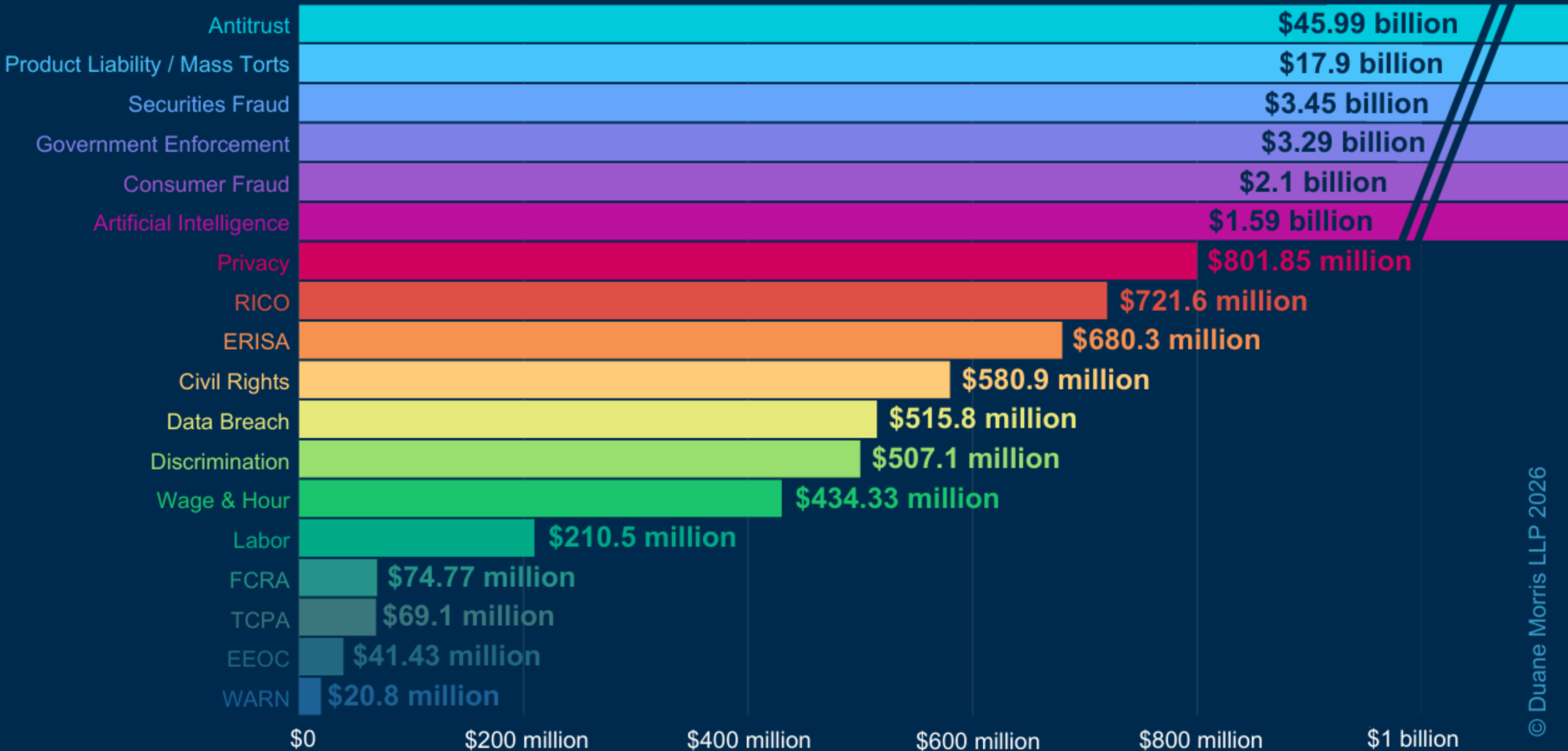
Settlement Numbers Break \$79 Billion

Billion Dollar Class Action Settlements In 2025



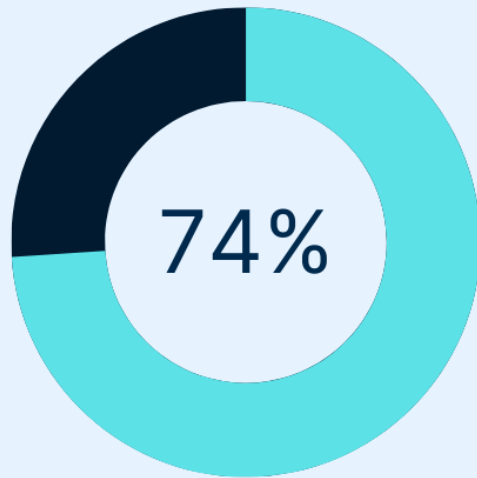


Class Action Settlements By Practice Area In 2025

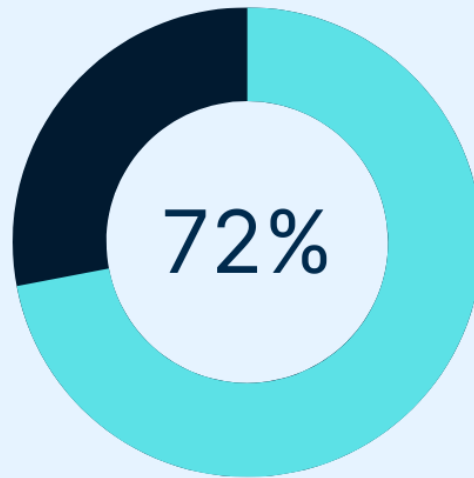


Courts Are Certifying Classes At High Rates

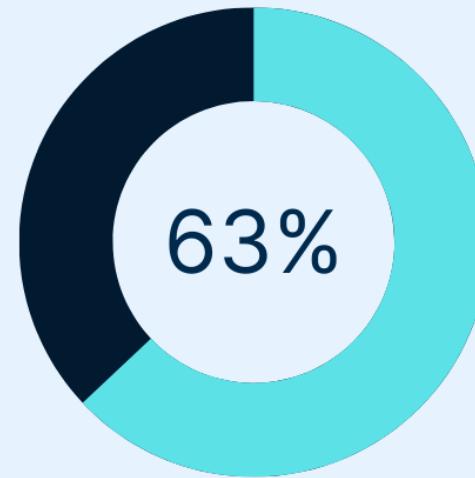
Class Certification Rates By Year



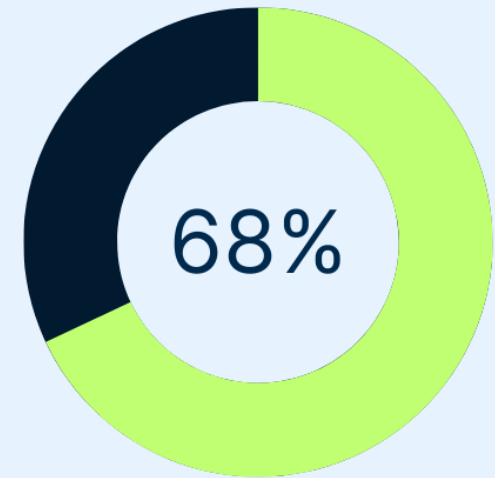
2022



2023



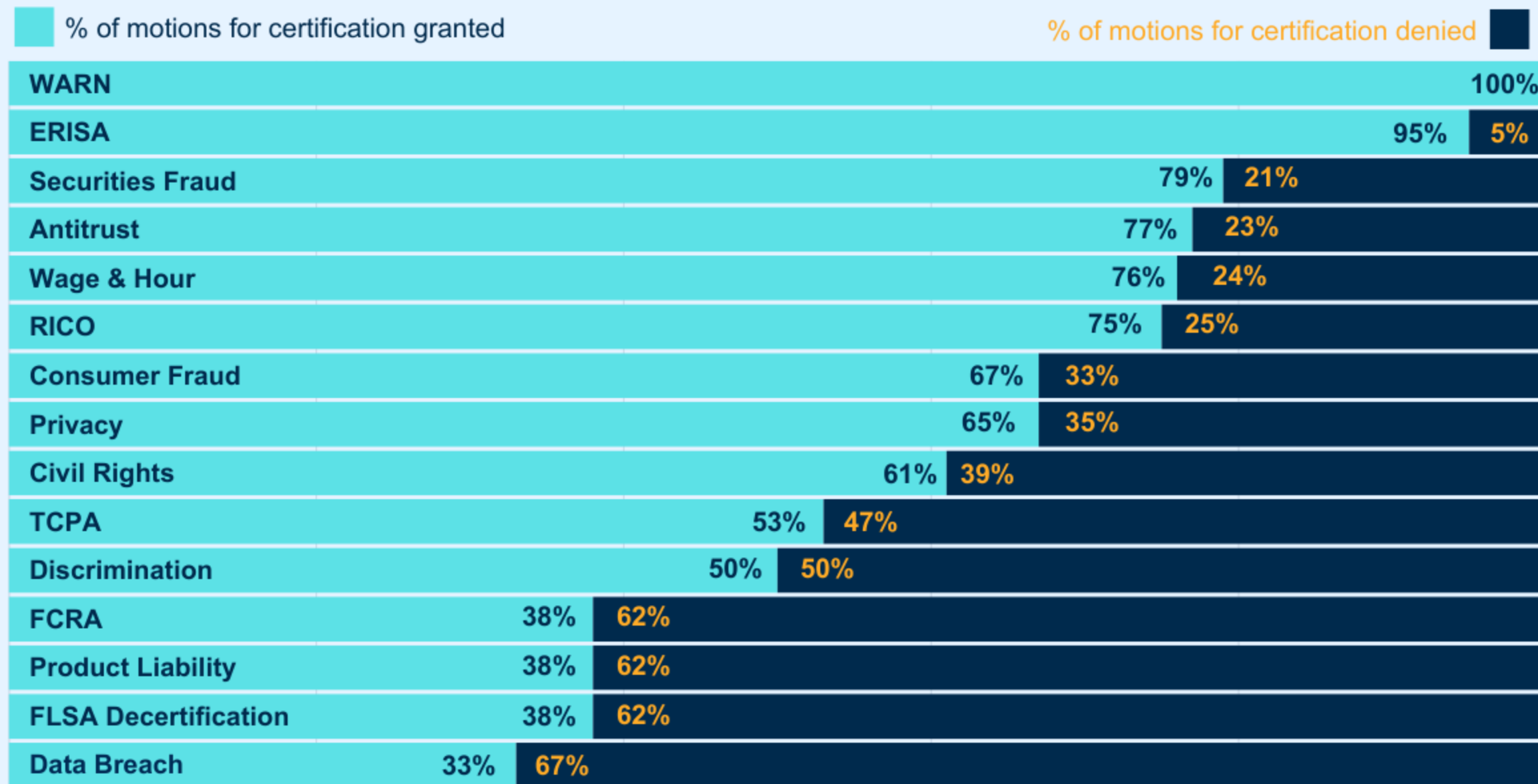
2024



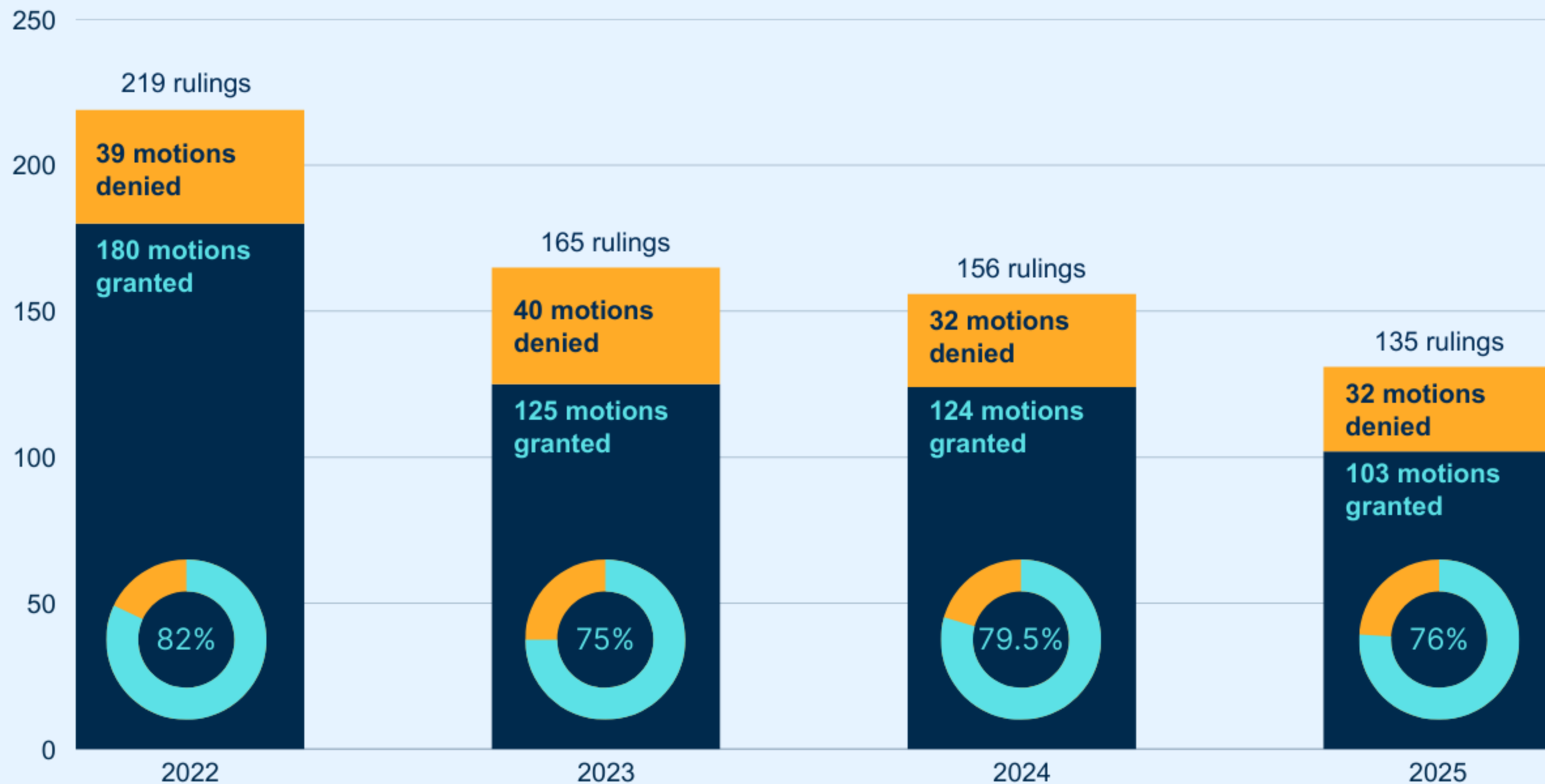
2025



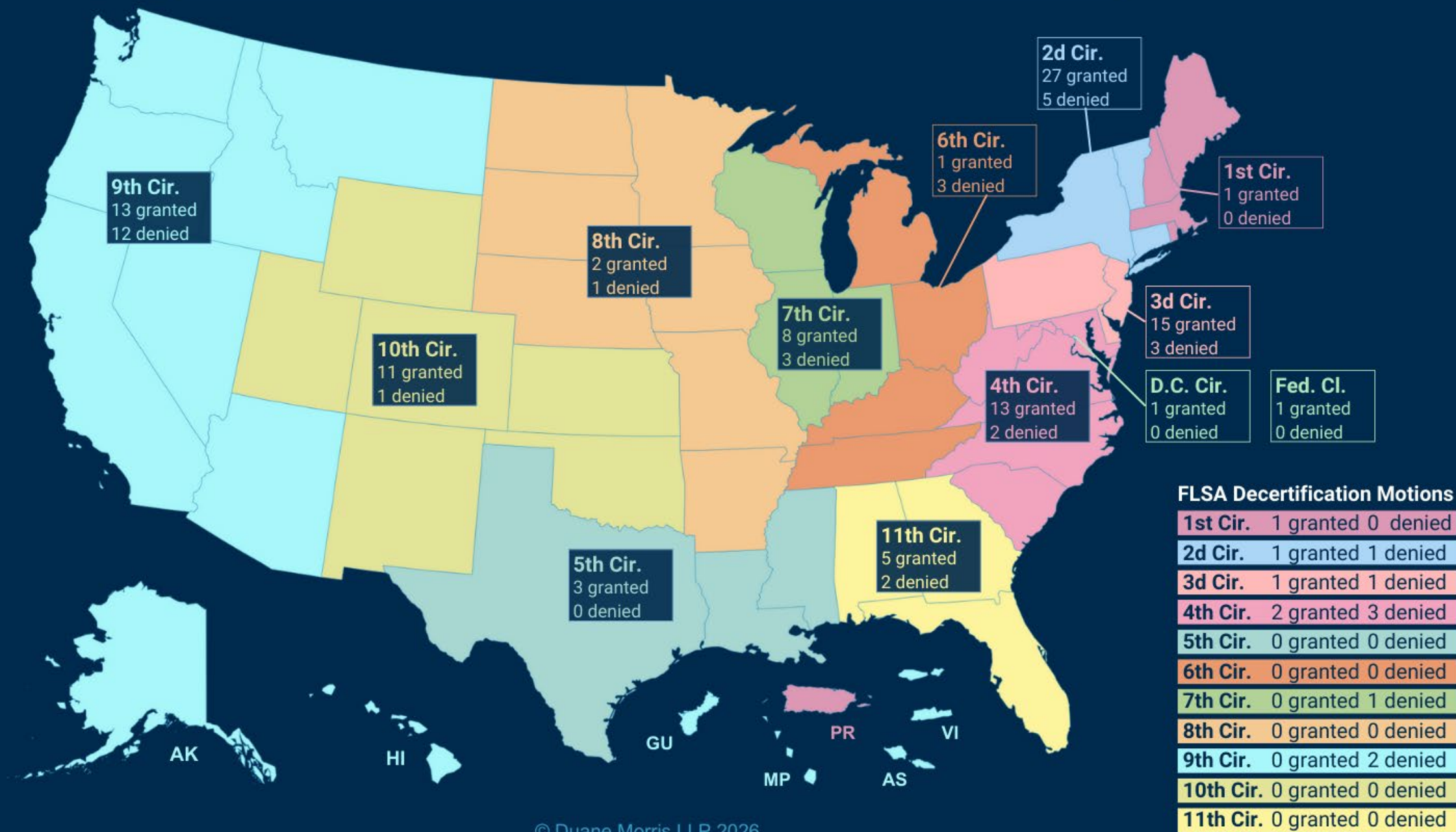
Certification Rates By Practice Area



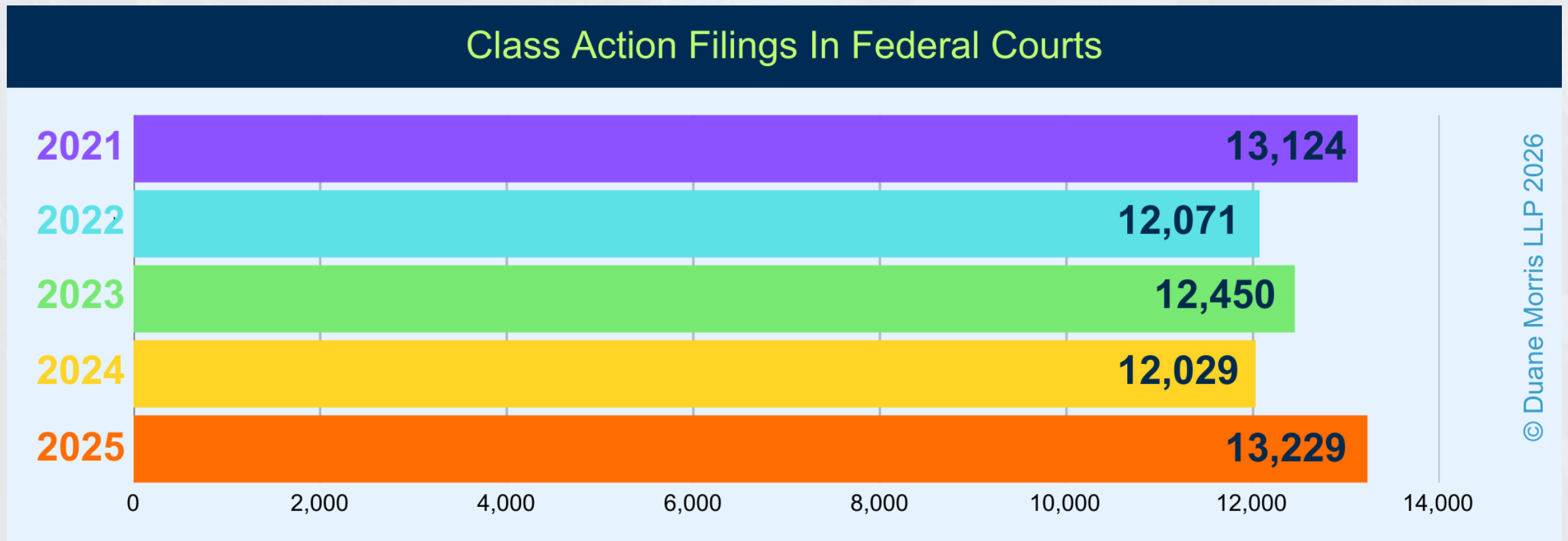
Wage & Hour Conditional Certification Rulings



FLSA Conditional Certification Motions Issued By Circuit In 2025

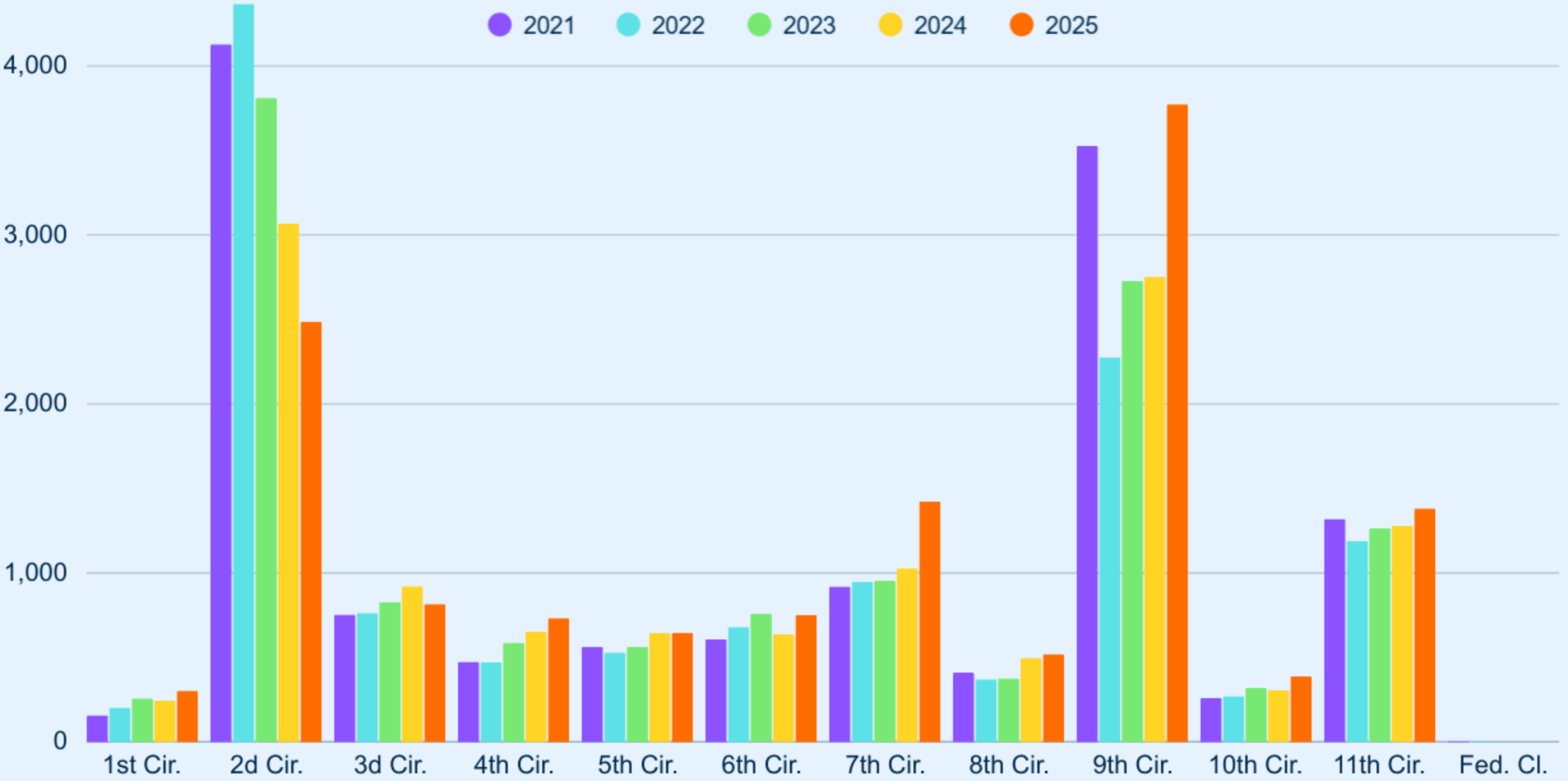


Class Action Filings Reached New Heights





Class Action Filings In Federal Courts By Circuit





Challenges To The Arbitration Defense

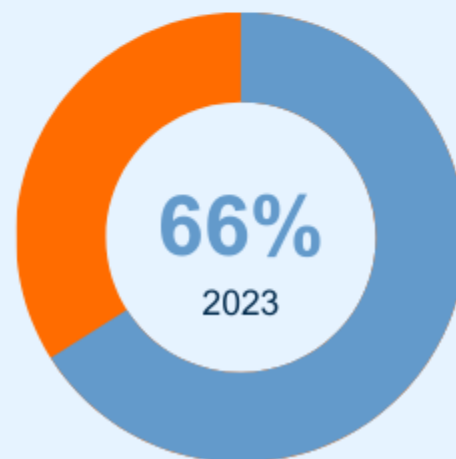
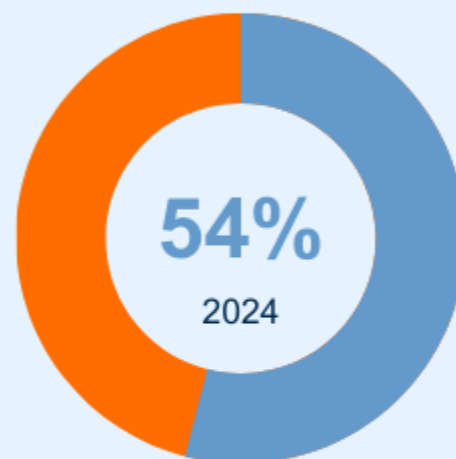
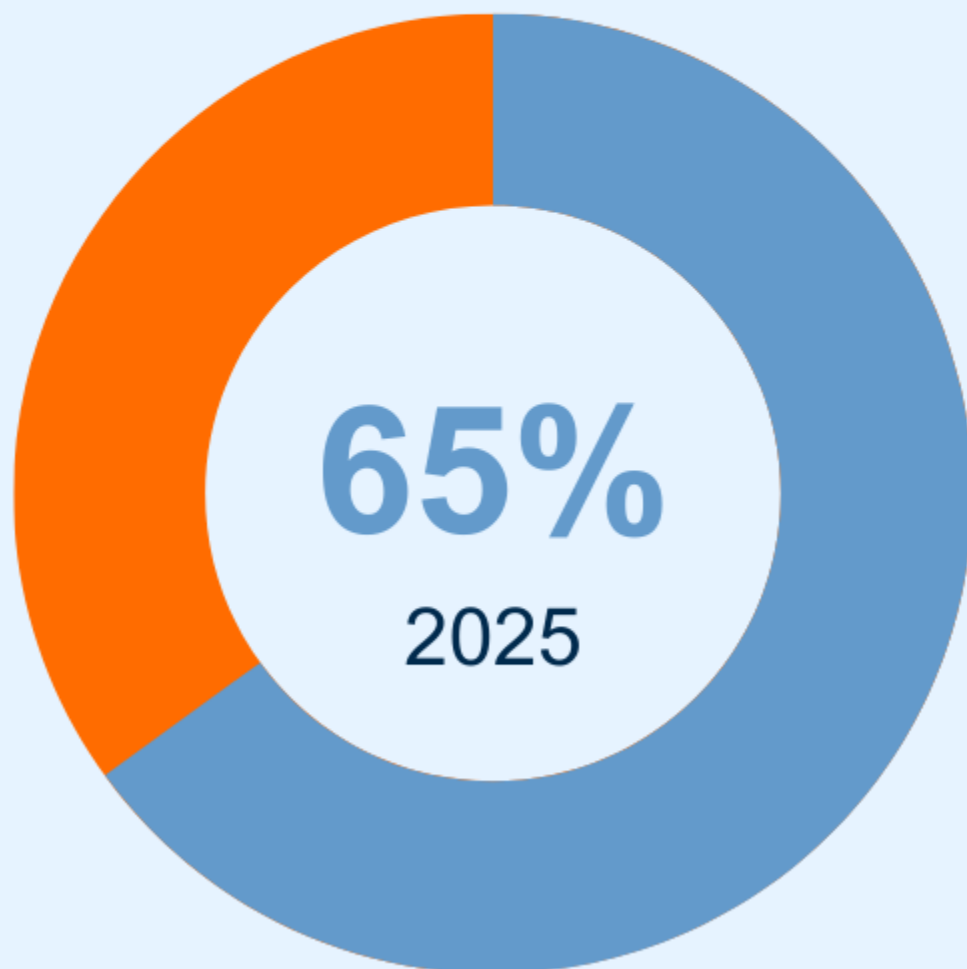


Arbitration Motions In 2025

In 2025, courts issued 189 rulings on motions for arbitration; **122 motions were granted** and **67 motions were denied**.

65%
of motions for
arbitration **granted**

35%
of motions for
arbitration **denied**



Key Arbitration Rulings

- In recent years, the U.S. Supreme Court has held that arbitration agreements requiring waiver of class and collective actions are enforceable under the FAA and not precluded by the National Labor Relations Act (“NLRA”), and that arbitration on a class-wide basis cannot be compelled absent unambiguous consent
 - *Epic Systems Corp. v. Lewis, et al.*, 138 S. Ct. 1612 (2018)
 - *Lamps Plus, Inc. v. Varela, et al.*, 139 S. Ct. 1407 (2019)

Key Arbitration Rulings

- In *Southwest Airlines Co. v. Saxon, et al.*, 142 S. Ct. 1783 (2022), although the Supreme Court applied the FAA's transportation worker exemption to preclude arbitration, it emphasized that the exemption is to be narrowly construed.
- This has been a high-impact ruling.

Key Arbitration Rulings

- In *Morgan, et al. v. Sundance*, 596 U.S. 411 (2022), the Supreme Court relaxed the requirements to establish waiver of the right to arbitration by holding that a party seeking to establish waiver need not prove prejudice.
- **Post-Morgan**
 - *Hill v. Xerox Business Services, LLC*, 59 F. 4th 457 (9th Cir. 2023)
 - *Alvarez, et al. v. Sheraton Operating Corp.*, 2023 U.S. App. LEXIS 6022 (9th Cir. Mar. 14, 2023)
 - *Quach v. California Commerce, Inc.*, 16 Cal.5th 562 (2024) (adopting Morgan's waiver standard under the California Arbitration Act)

Key Arbitration Rulings

- In *Viking River Cruises, Inc. v. Moriana, et al.*, 142 S.Ct. 1906 (2022), the Supreme Court held the FAA preempted California's rule barring individual arbitration of claims under California's Private Attorneys General Act ("PAGA").
- It also suggested in *dicta* that, once an individual PAGA claim is pending in arbitration, the plaintiff lacks standing to pursue non-individual PAGA claims.

Key Arbitration Rulings

Post-Viking River

- The California Supreme Court took up the standing issue in *Adolph, et al. v. Uber Technologies, Inc.* 14 Cal.5th 1104 (Cal. 2023), and it disagreed.
- *Nickson, et al. v. Shemran, Inc.*, 90 Cal.App.5th 121 (Cal. App. 2023)
- *Westmoreland, et al. v. Kindercare Educ. LLC*, 90 Cal.App.5th 967 (Cal. App. 2023)
- *Gentry, et al. v. Robert Half International, Inc.*, 2023 Cal. App. Unpub. LEXIS 5886 (Cal. App. Oct. 3, 2023)
- *Heckman v. Live Nation Ent. Inc.* , 120 F.4th 670 (9th Cir. 2024)
- *Flores v. New York Football Giants Inc.* , 150 F.4th 172, 183 & n.49 (2d Cir. 2025)

Key Arbitration Rulings

- In *Smith v. Spizzirri*, 601 U.S. 472 (2024), the Supreme Court issued a unanimous decision holding that, when a district court determines that a plaintiff's claims are arbitrable, the district court does not have discretion to dismiss the lawsuit.

Key Arbitration Rulings

- In *Bissonnette, et al. v. LePage Bakeries Park St., LLC*, 601 U.S. 246 (2024), the Supreme Court issued another decision regarding the FAA's transportation worker exemption. The Supreme Court again cautioned that the exemption does not apply in "limitless terms" and, instead, applies only where workers play "a direct and necessary role in the free flow of goods across borders."

Key Arbitration Rulings

- In 2024, the U.S. Supreme Court issued its decision in *Coinbase, Inc. v. Suski, et al.*, 144 S. Ct. 1186 (2024), holding that, where parties have agreed to two contracts – one sending disputes regarding arbitrability to arbitration, and the other sending disputes regarding arbitrability to the courts – a court (and not an arbitrator) must decide which contract governs.



Emerging Areas Of Litigation

Emerging Areas Of Risk

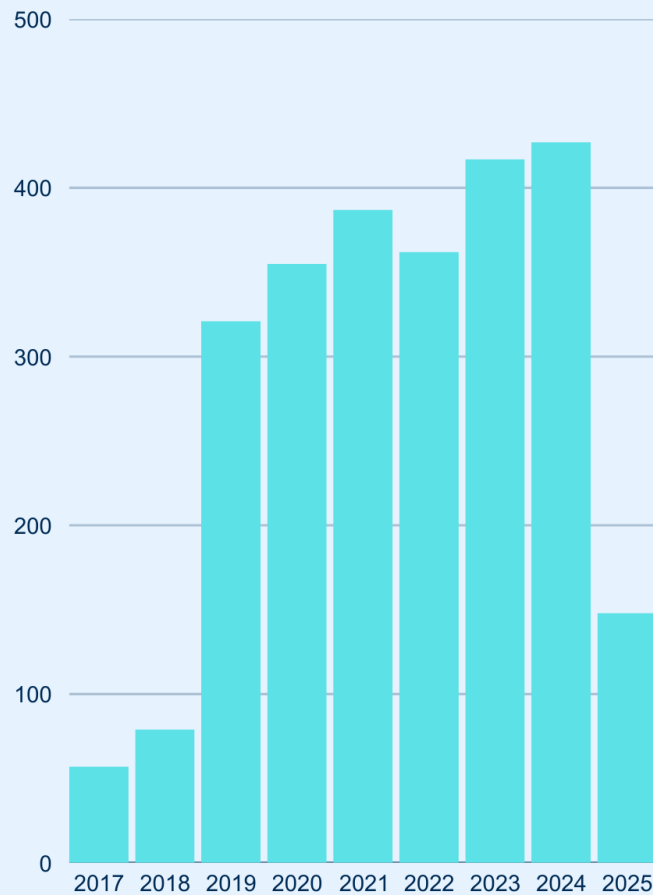
- Workplace digital technology challenges employers to find ways to maximize productivity while preventing illegal or inappropriate conduct without intruding on employee privacy. This challenge is manifested by employer monitoring of employees' electronic communications.
- At present, there is a clear gap between the advances in digital technology and the pace of the law as they intersect in the workplace.
- Employer conduct that imposes restraints on employee privacy has the potential to become a “hot button” issue with workers.

Privacy Class Actions

- **Statutory ambiguity** has produced mixed outcomes under many of these statutes for plaintiffs and defendants.
- **High stakes** due to maximum statutory damages under the ECPA, CIPA, VPPA, BIPA, and GIPA ranging from \$2,500 to \$15,000 per violation, all with no proof of actual harm required, resulting in four- or five-figure multipliers times tens of thousands of website visitors, for example, results in mammoth requested damages.
- **Increased filings** as a result of the statutory ambiguity and high statutory penalties.
- **Divergent rulings** between and within jurisdictions on core issues.

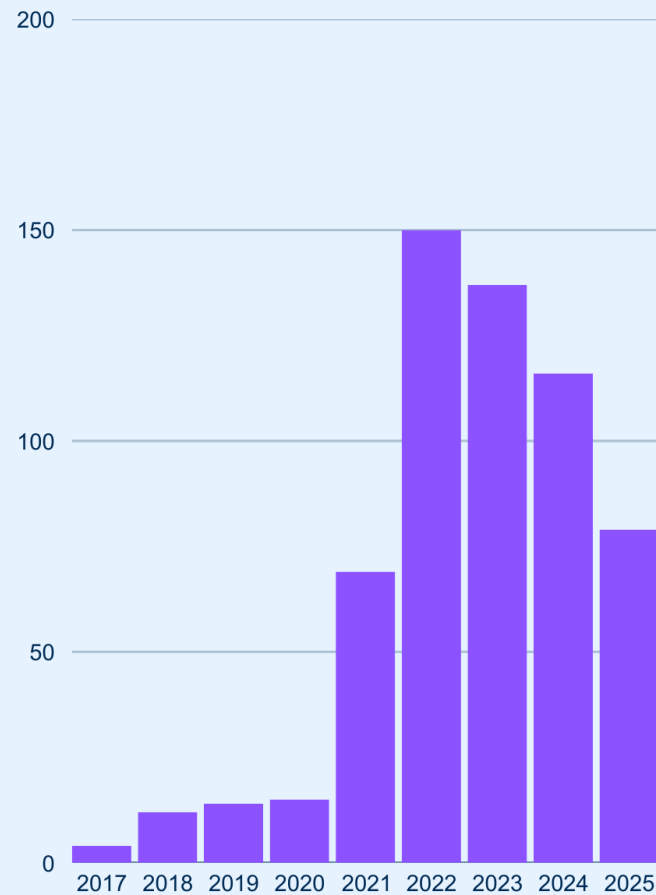
Privacy Class Actions

BIPA Filings By Year



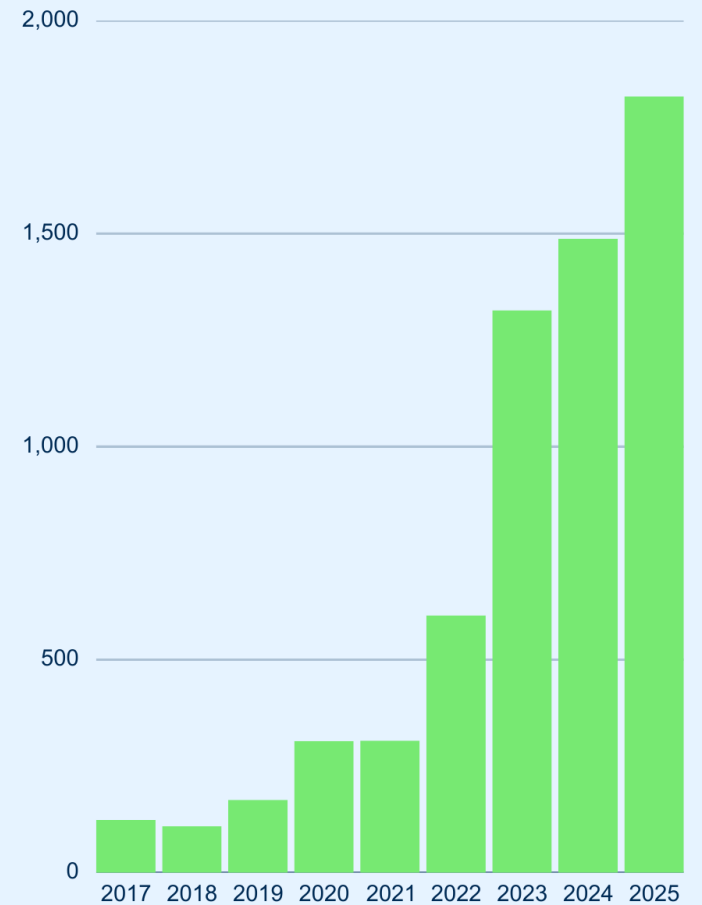
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VPPA Filings By Year



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Data Privacy Filings By Year



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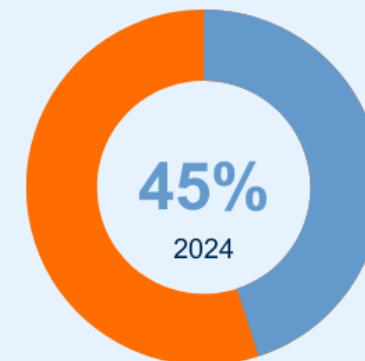
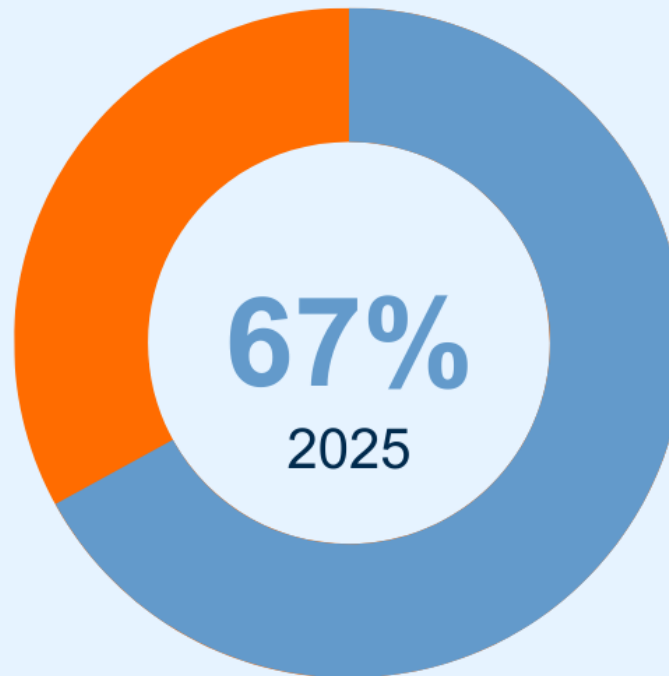
Privacy Class Actions

CLASS CERTIFICATION RATES IN 2025

Privacy

67%
of motions for class
certification granted

33%
of motions for class
certification denied



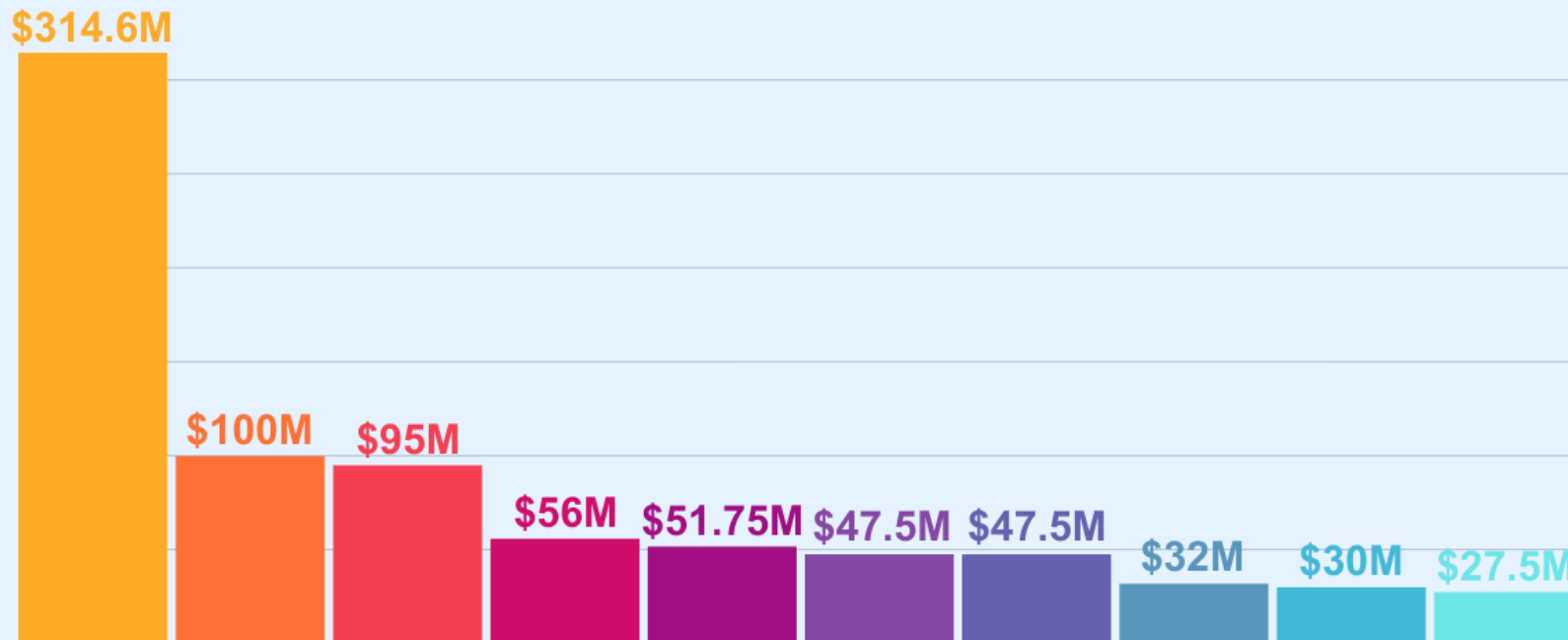
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Privacy Class Actions

TOP CLASS ACTION SETTLEMENTS IN 2025

Privacy

Top 10 totaled \$801.85 million in 2025 | \$2.01 billion in 2024 | \$1.32 billion in 2023 | \$896.7 million in 2022



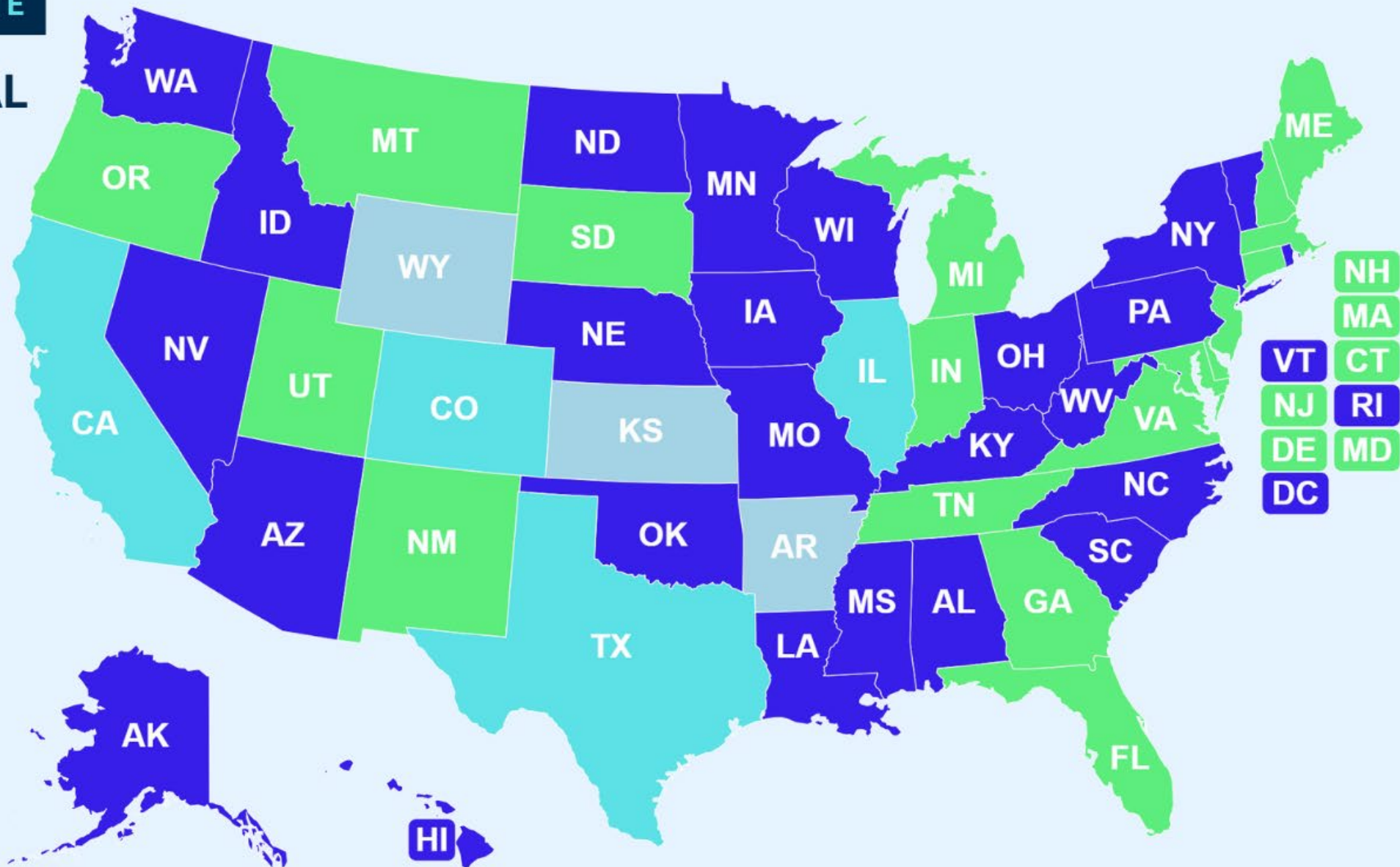
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2026 LEGISLATIVE UPDATE

STATE ARTIFICIAL INTELLIGENCE LAWS

- Enacted legislation
- Enacted legislation effective in 2026
- Proposed legislation
- No current legislation



Emerging Areas Of Risk

Workplace Laws in Cyberspace

- The **Electronic Communications Privacy Act** of 1986 (“ECPA”) is the pertinent federal statute that applies to email monitoring.
- The ECPA prohibits unauthorized interception of e-mail communications and unauthorized access to stored electronic communications, defining “electronic storage” as including any temporary or intermediate storage of e-mail communications, as well as the storage of any such communications for back-up protection.
- Important exceptions contained within the ECPA that allow access authorized by any entity providing an electronic communications service.

AI And Algorithmic Bias

Workplace Laws in Cyberspace

- The new challenge of artificial intelligence (“AI”) technologies is now pertinent to employers in the modern American workplace. This is especially challenging given the onslaught of new regulations, the patchwork quilt of existing data protection and privacy laws and heightened regulatory enforcement.
- At the federal level, Title VII prohibits discrimination based on race, color, religion, sex, or national origin in employment practices. Employers can be held liable under Title VII for facially neutral practices that have a disproportionate, adverse impact on members of a protected class – **including decisions made by AI systems.**
- At the state law level, for example, Illinois and Colorado target workplace algorithmic discrimination and make it unlawful for companies to use AI tools that could discriminate based on a protected class.

Technologies At Issue In AI-Related Litigation

- Biometric technologies
- Website advertising technologies (“adtech”)
- Profiling and automated decision-making (“ADM”) technologies
- Clinical medicine
- Generative AI (“gen AI”)
- Pricing
- Educational operations (“edtech”)
- Financial technologies (“fintech”)

Data Breach Class Actions

- In 2025, there was a notable increase in data breach class actions. Data breach class actions filed within the first half of the year totaled **944** with a monthly average of nearly **158**. By the end of the year, over **1,822** data breach class actions had been filed.
- The surge in filings is driven by sophistication of cybercriminal activity, caselaw developments providing momentum to plaintiffs, and high-profile cases resulting in substantial settlement amounts.
- In Re MOVEit Customer Data Security Breach Litigation, Case No. 23-MD-3083 (D. Md.), a consolidated class action involving a data breach that allegedly impacted over 85 million people, became the largest data breach class action in the country.

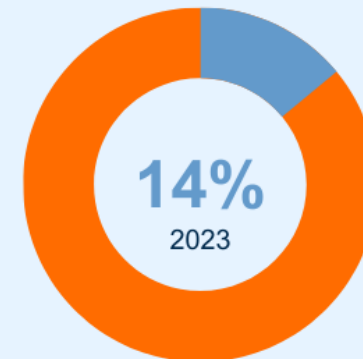
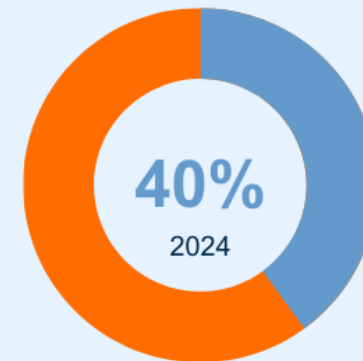
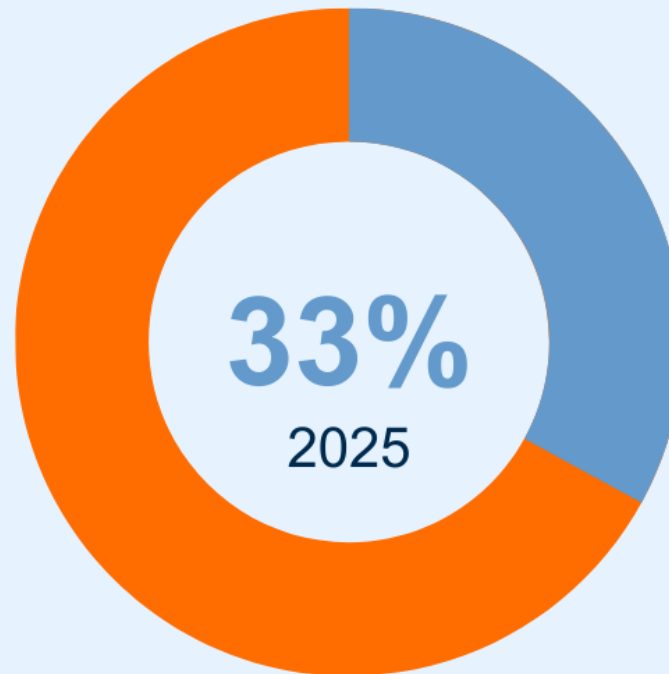
Data Breach Class Actions

CLASS CERTIFICATION RATES IN 2025

Data Breach

33%
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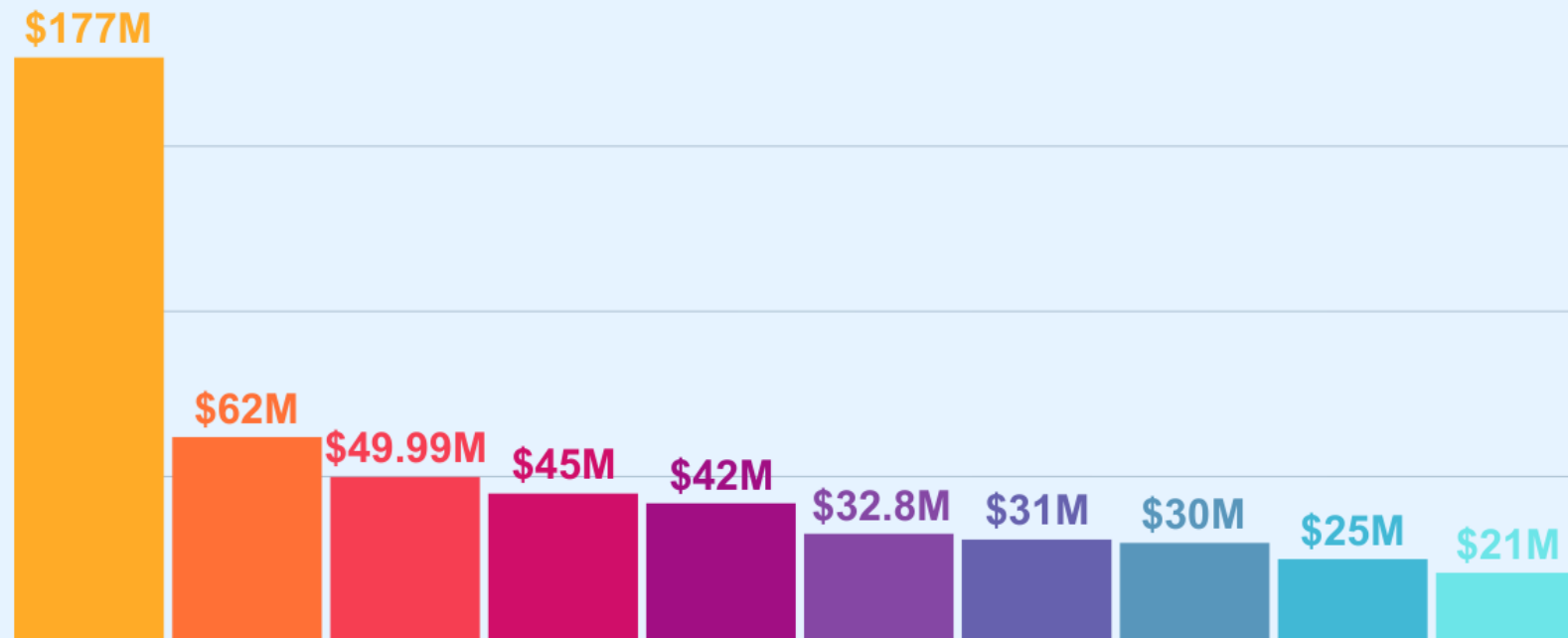
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Data Breach Class Actions

TOP CLASS ACTION SETTLEMENTS IN 2025

Data Breach

Top 10 totaled \$515.79 million in 2025 | \$593.2 million in 2024 | \$515.75 million in 2023 | \$719.21 million in 2022



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Circuit Splits Shaping The Litigation Landscape

Circuit Splits Shaping The Landscape

- **Courts disagree over the standards for conditional certification of collective actions.** The standards for conditional certification under the FLSA, EPA, and ADEA, continue to diverge such that district and appellate courts are applying any of at least four distinct approaches. These statutes provide little guidance as to the process they intended to incorporate for so-called conditional certification.
- **Courts continue to disagree over standing and personal jurisdiction.** Courts continue to disagree regarding the impact and treatment of uninjured class members, a key issue that remains unresolved. It is axiomatic that individuals who did not suffer injury as the result of the defendant's conduct cannot maintain claims, and courts do not have the power to award them relief.

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CLASS ACTION REVIEW 2026

CHECK OUT THE DUANE MORRIS CLASS
ACTION REVIEW – 2026 E-BOOK:



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thank you

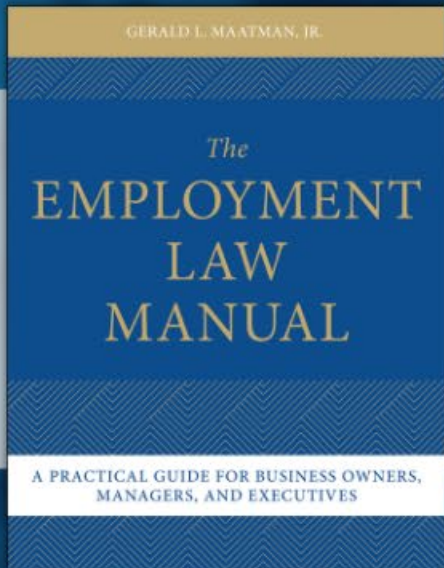


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THE CLASS ACTION WEEKLY WIRE