PROGRAM MATERIALS
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# Navigating the Lifecycle of a Class Action

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LIVE CLE WEBINAR

# Navigating The Lifecycle Of A Class Action



**Gerald L. Maatman, Jr.**

Celesq
November 2026

DuaneMorris®

# TODAY'S SPEAKER




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## TODAY'S AGENDA

I. The Lifecycle Of Class Action Litigation

II. Key Phases Shaping Class Certification Strategy

III. Best Practices Pre- And Post-Class Certification

IV. Risk Mitigation

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# The Lifecycle Of Class Action Litigation



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# Rule 23(a) Requirements

1. **Numerosity**
2. **Commonality**
3. **Typicality**
4. **Adequacy**

# Rule 23(b) Requirements

1. **Predominance**
2. **Superiority**

# Overview Of The Class Action Lifecycle

1. Pre-Litigation Case Assessment
2. Pre-Trial Pleadings and Motion Practice
3. Settlement and Arbitration
4. Fact and Document Discovery
5. Class Certification
6. Expert Discovery
7. Motion for Summary Judgment
8. Pre-Trial Conferences
9. Trial Preparation, Trial, and Post-Trial
10. Appeal

# The Class Action Lifecycle

## 1. Pre-Litigation Case Assessment

- Factual research and investigation
- Review collected key documents
- Analyze case, develop strategy, and confer with the Company
- Legal research and assessment
- Conduct initial case assessment presentation for Company
- Interview key stakeholders or witnesses

## 2. Pre-Trial Pleadings and Motion Practice

- Draft and file Answer
- Draft and file Motion to Dismiss
- Oral argument on Motion to Dismiss
- Prepare Initial Disclosures
- Draft any other preliminary motions, both affirmative and responsive

# The Class Action Lifecycle

## 3. Settlement and Arbitration

*Settlement*

- Mediation and settlement negotiations
- Selection of Arbitrator
- Drafting and preparation of a mediation statement
- Individual settlement with a simple settlement and release agreement

*Arbitration*

- Motion to compel arbitration
- Reply and hearings / oral arguments
- Appeals of arbitration rulings

# The Class Action Lifecycle

## 4. Class Certification

- Pre-Certification Discovery
- Opposition Motion to Class Certification
- Class Notice Issues
- Assume that Plaintiffs will move for class certification and that Defendants will oppose that motion
- Firm will work with a testifying expert to develop an expert report in opposition to class certification
- Brief with an expert declaration and exhibits
- Preparation for and attendance at oral argument

# The Class Action Lifecycle

## 5. Class Certification

- Meet and confer with Company
- Written Discovery: Propound/respond to written discovery
- Document Production: Produce documents responsive to discovery requests, prepare privilege log
- Discovery Motions and Disputes
- Draft subpoenas with record requests
- Witnesses
- Taking Fact Depositions Witnesses
- Defending Fact Depositions Witnesses

# The Class Action Lifecycle

## 6. Expert Discovery

- Interview and retain expert
- Prepare and review plaintiff's expert disclosures
- Prepare expert disclosures for defense
- Take expert depositions
- Defend expert depositions
- Daubert Motions

## 7. Motion for Summary Judgment

- Preparation and filing of Motion for Summary Judgment
- Reply motion
- Oral argument/hearing

# The Class Action Lifecycle

## 8. Pre-Trial Conferences

- Mediation, including non-binding ADP 1 mediation brief
- Settlement conferences and hearings
- Settlement implementation such as drafting settlement agreement

## 9. Trial Preparation, Trial and Post-Trial

- Trial Preparation, including witness preparation and exhibit lists
- All trial motions, including any argument required, such as Motions in Limine, Daubert, etc.
- Trial attendance
- Post-Trial briefing, motions, and submissions

## 10. Appeal

- Drafting, filing, and perfecting appeal
- Drafting, filing, and arguing appellate briefs
- Other related motions

# Taking Depositions

## Key Considerations

- Key facts for class certification motion
- Key facts on merits issues
- Key facts on damages
- Named Plaintiffs and class members

# Defending Depositions

## Key Considerations

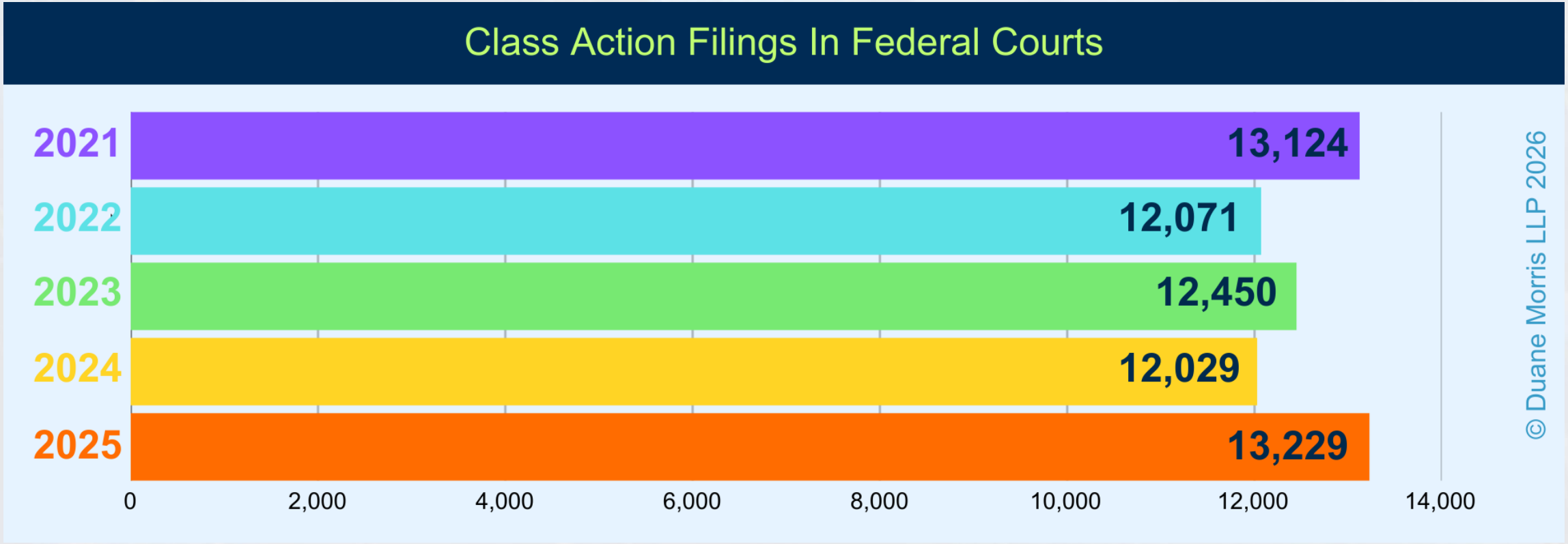
- All-important Rule 30(b)(6) deposition
- Corporate designee selection
- Bifurcation of discovery and topics

# Phases Shaping Class Certification Strategy

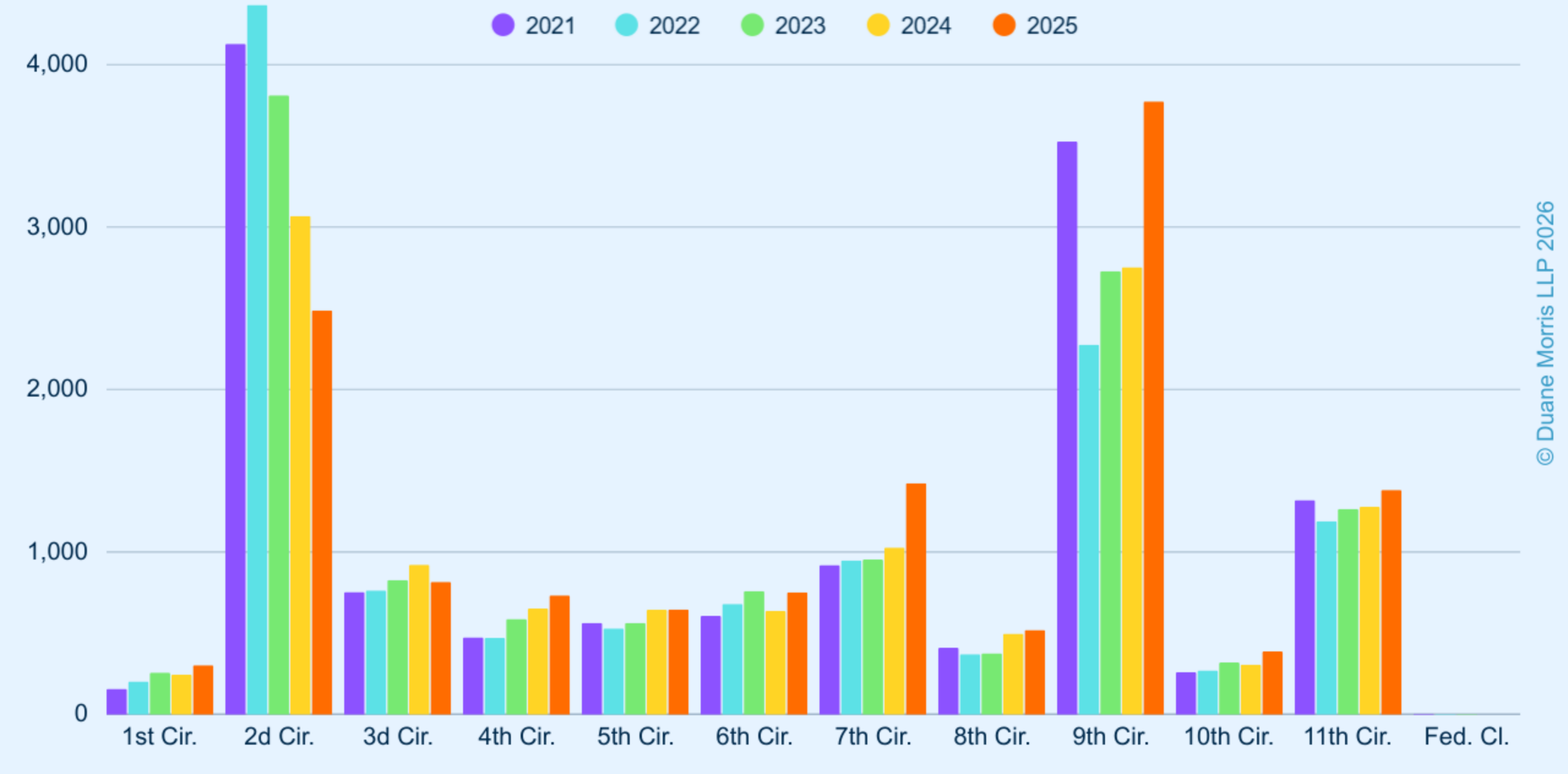


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# Class Action Filings Reached New Heights

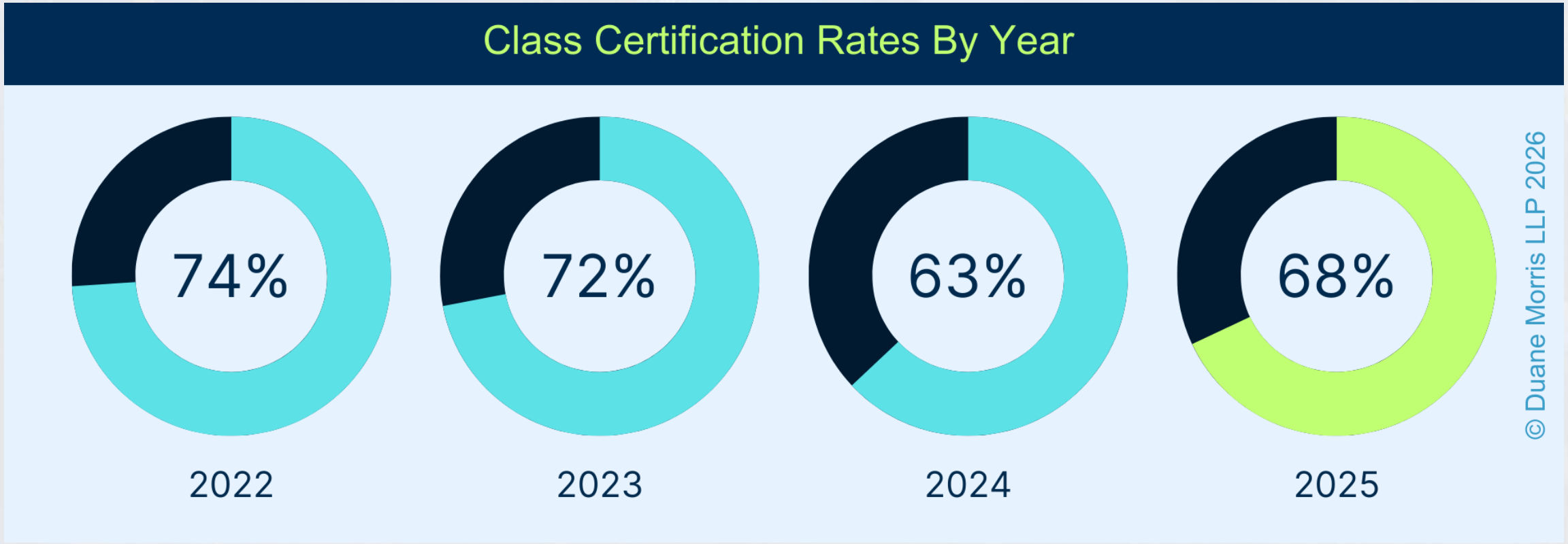


# Class Action Filings In Federal Courts By Circuit




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# Courts Are Certifying Classes At Very High Rates

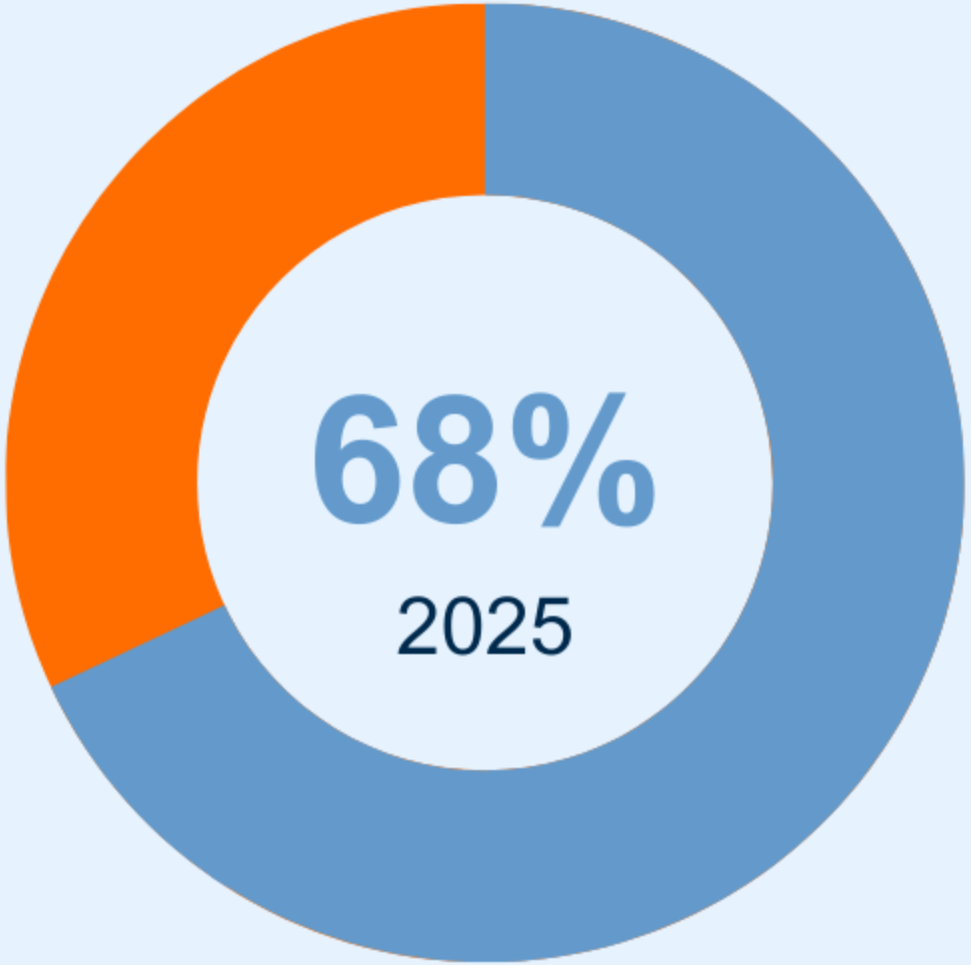


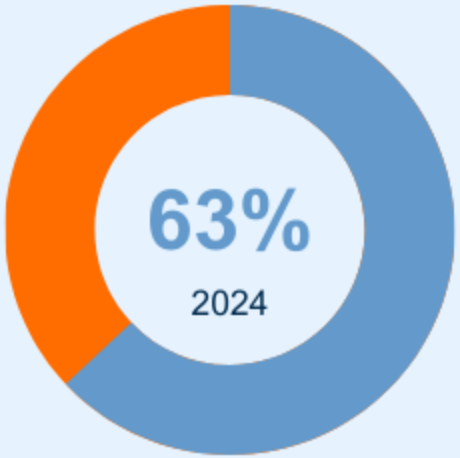
# Class Certification Rates In 2025

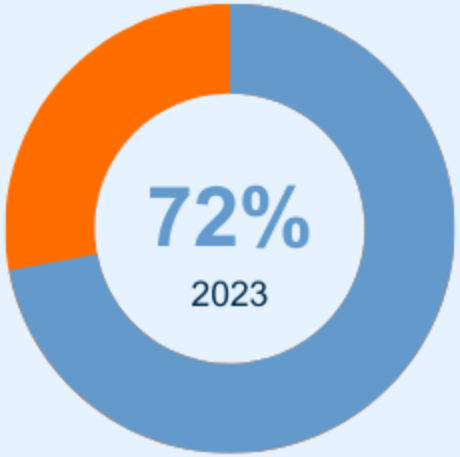
In 2025, courts issued 435 rulings on motions for class certification; **297 motions were granted** and **138 motions were denied**.

**68%**
of motions for class certification granted

**32%**
of motions for class certification denied

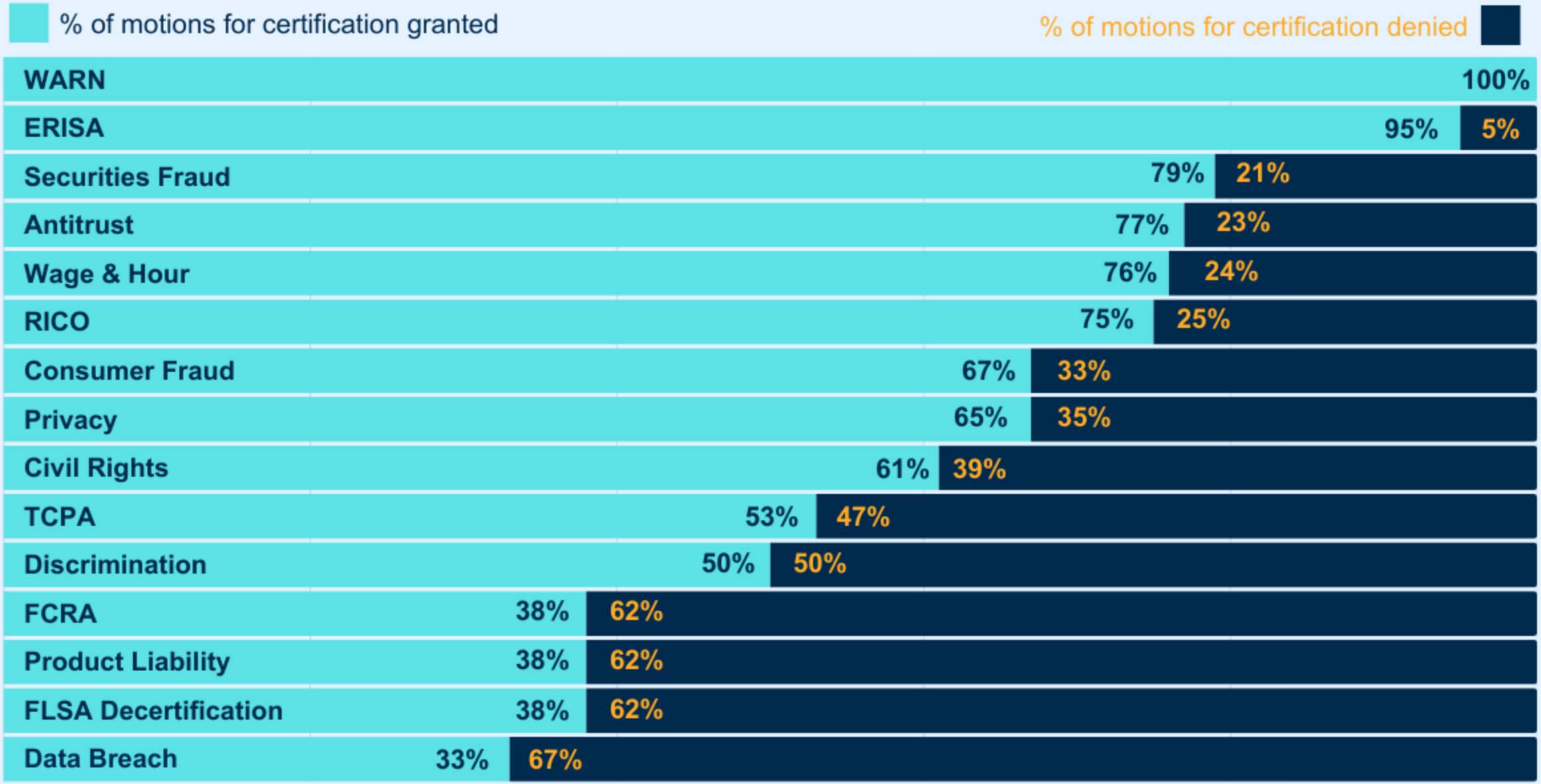


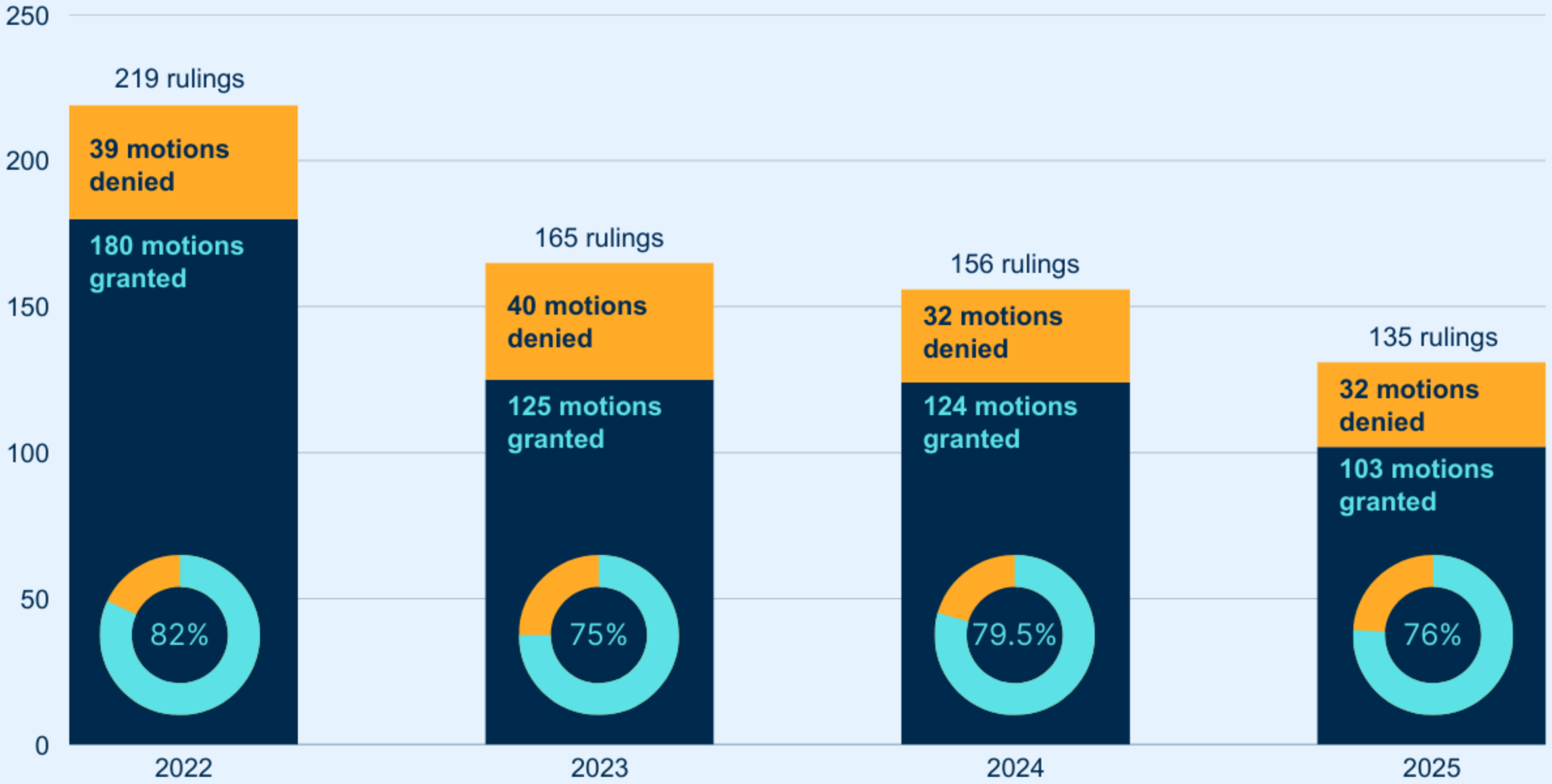

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# Certification Rates By Practice Area



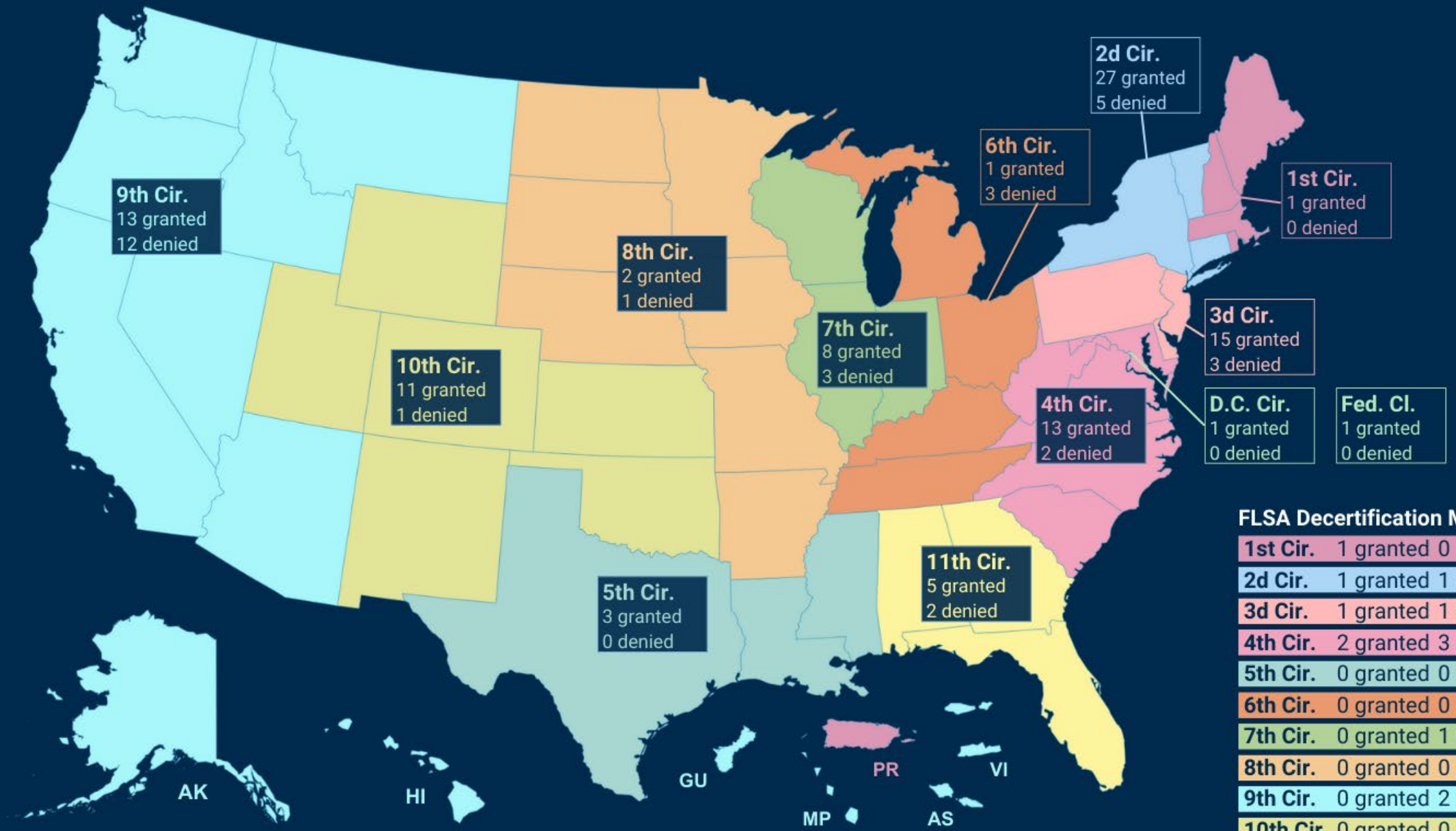

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# Wage & Hour Conditional Certification Rulings




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# FLSA Conditional Certification Motions Issued By Circuit In 2025

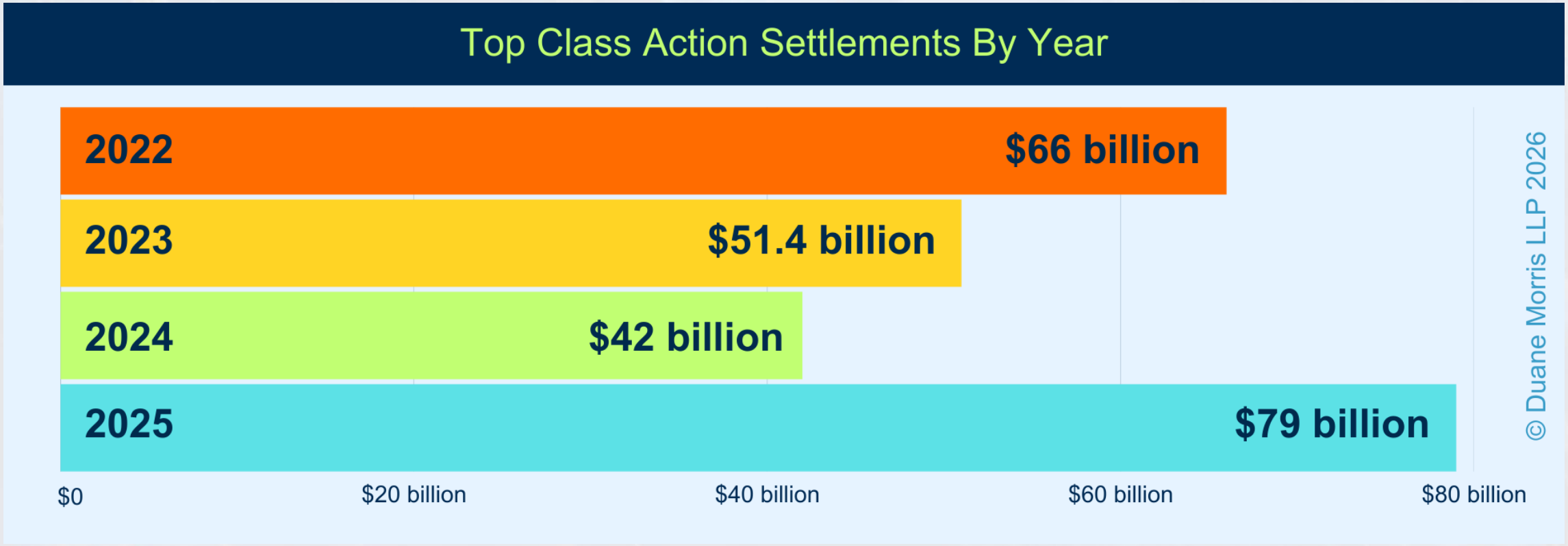



**FLSA Decertification Motions**

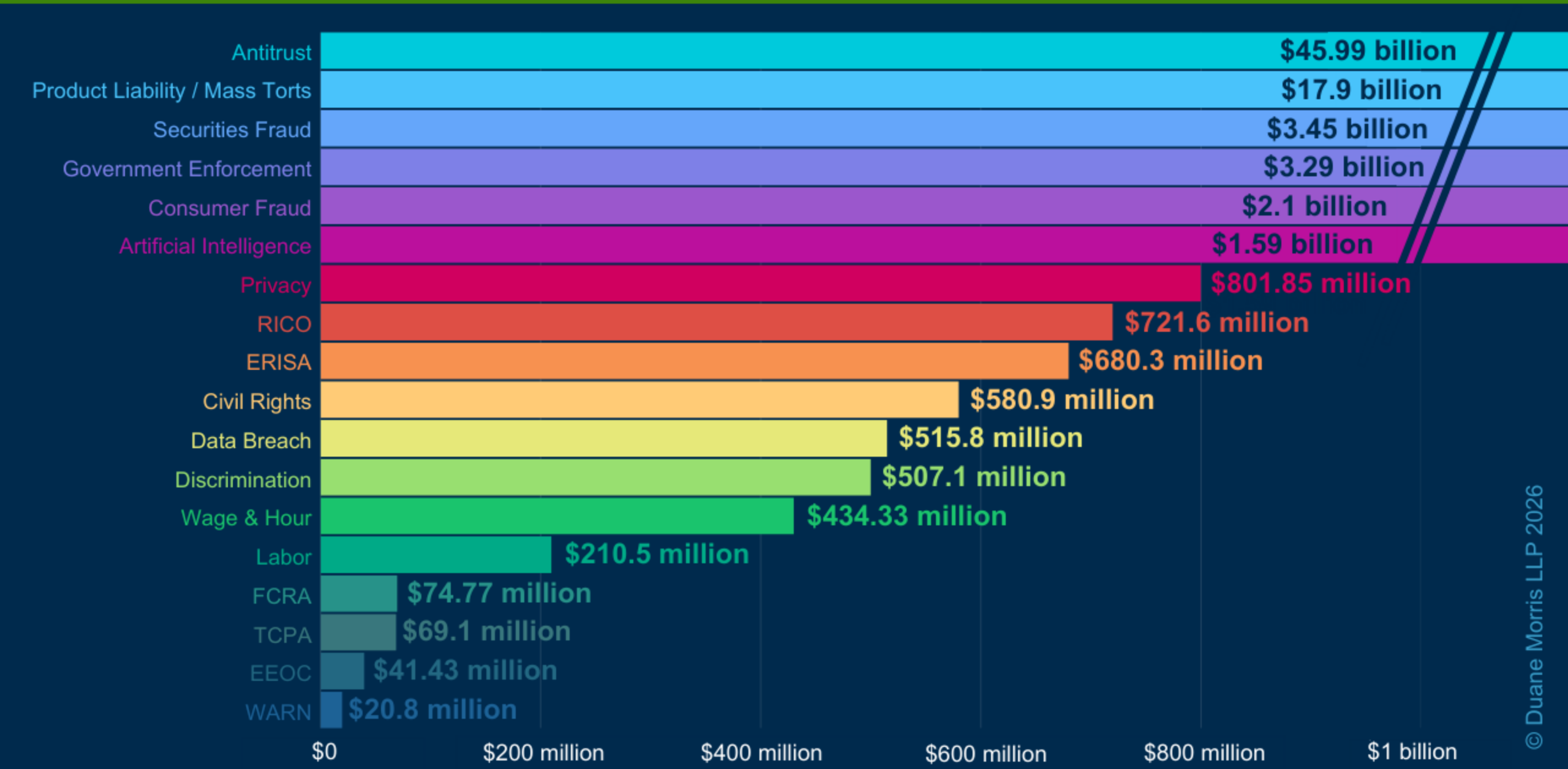
| | | | |
|---|---|---|---|
| 1st Cir. | 1 granted | 0 | denied |
| 2d Cir. | 1 granted | 1 | denied |
| 3d Cir. | 1 granted | 1 | denied |
| 4th Cir. | 2 granted | 3 | denied |
| 5th Cir. | 0 granted | 0 | denied |
| 6th Cir. | 0 granted | 0 | denied |
| 7th Cir. | 0 granted | 1 | denied |
| 8th Cir. | 0 granted | 0 | denied |
| 9th Cir. | 0 granted | 2 | denied |
| 10th Cir. | 0 granted | 0 | denied |
| 11th Cir. | 0 granted | 0 | denied |

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# Settlement Numbers Broke $79 Billion In 2025



# Class Action Settlements By Practice Area In 2025




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# Best Practices Pre-Certification and Post- Certification

# About Conditional Certification

- At “first stage” certification, Plaintiffs can expand the case exponentially based on a “modest showing”
  - ➢ Plaintiffs’ motion for conditional certification and Defendant’s response are critical in a collective action
- From the defense side, positioning a potential collective action to maximize the chance of defeating or limiting conditional certification is critical to everything that follows

# About Conditional Certification

- Discovery is extremely important in FLSA collective actions
  - Discovery may be conducted both *before* a decision on conditional certification and *after* a collective action has been conditionally certified
- Courts apply a more lenient standard for conditional certification because, at the notice stage, discovery is absent or incomplete
- Where discovery has occurred, some courts apply a more rigorous standard – the "modest plus" standard

# Why Employers Usually Oppose Conditional Certification

- Denial of conditional certification may be the death knell of the litigation
- Even if not completely successful, a vigorous response in opposition may result in a narrower/more limited conditional certification decision
- A strong response in opposition may condition the court for a more favorable ruling at a later stage
- A strong response in opposition can be leveraged into a- favorable settlement

# Why Employers Usually Oppose Conditional Certification

## "You can't put the toothpaste back in the tube"

- The court might "only" conditionally certify and provide indication as to dissimilarities to which it might apply heightened scrutiny at the second stage
- Insights from the court can be used to shape discovery and de-certification strategy



# Why Employers May Choose Not To Oppose Conditional Certification

- Most conditional certifications motions are granted, often even in the face of a compelling response (over 70%)
  - Know the jurisdiction
  - Know the judge's prior rulings
  - Know what other courts have done in similar cases
- Dissimilarities may seem insignificant, especially at the conditional certification stage
  - Nature of the claim
  - Results of internal investigation

# Why Employers May Choose Not To Oppose Conditional Certification

- An employer might not want to preview ultimate de-certification arguments at the conditional certification stage, especially where the employer intends to obtain admissions in discovery
- Opposing a motion for conditional certification is costly; legal fees can be substantial, especially where a wide-ranging declaration campaign is contemplated
- It could be advantageous to "trade" opposition for a favorable collective action definition, form/content of notice, and/or notice distribution method
- If a low opt-in rate is anticipated, conditional certification may not be significantly detrimental, and might help defeat Rule 23 certification
- Post-opt-in settlement might be the most-advantageous exit strategy

# Discovery At The Notice Stage

- Plaintiffs often submit declarations from collective action members to support conditional certification.
  - Courts are reluctant to "weigh" the evidence or make credibility determinations based on defense declarations
- Consider motion to strike conclusory or speculative statements
- Collect defensive manager declarations that show lack of uniformity
- Use declarations to demonstrate gaps in Plaintiffs' showing
  - Lack of uniformity of claims, lack of personal knowledge, etc.

# Discovery At The Notice Stage

- Use discovery to preempt or limit the impact of declarations
- Plan ahead relative to the proposed scheduling order
  - Allow time for discovery before briefing
  - Provide firm dates for filing motion and response
- Use discovery to illustrate shortcomings in Plaintiffs' case
  - Gain admissions regarding lack of similarly
  - Gain admissions regarding lack of personal knowledge
  - Gain admissions for dispositive motion to avoid certification

# Methods To Obtain & Use Evidence To Defeat/Limit Conditional Certification

- Timing of conditional certification motion can dictate the standard used by the court
  - Employers can argue that the more discovery is conducted, the higher standard should be for conditional certification
- Timing of conditional certification motion impacts the quantum of evidence available to oppose conditional certification
  - Employers can attempt to continue the motion to permit discovery
  - Move quickly; plaintiffs often counter with requests for tolling

# Methods To Obtain & Use Evidence To Defeat/Limit Conditional Certification

- Benefits of declaration campaign
  - Identify strengths and weaknesses of case earlier on
  - Lock in good evidence from potential collective action members
- Targets of declaration campaign – choose wisely:
  - Managers, supervisors
  - Potential collective action members
- Depositions
- Use of experts

# Limiting The Collective Action

- Courts are often skeptical of nationwide collective actions encompassing multiple positions, locations, supervisors, practices
- Argue that the potential collective action should be limited to individuals who share named plaintiff's position, location, supervisor
- Court may narrow proposed collective action definition or may deny without prejudice and permit plaintiff to re-file motion to conditionally certify a narrower collective action

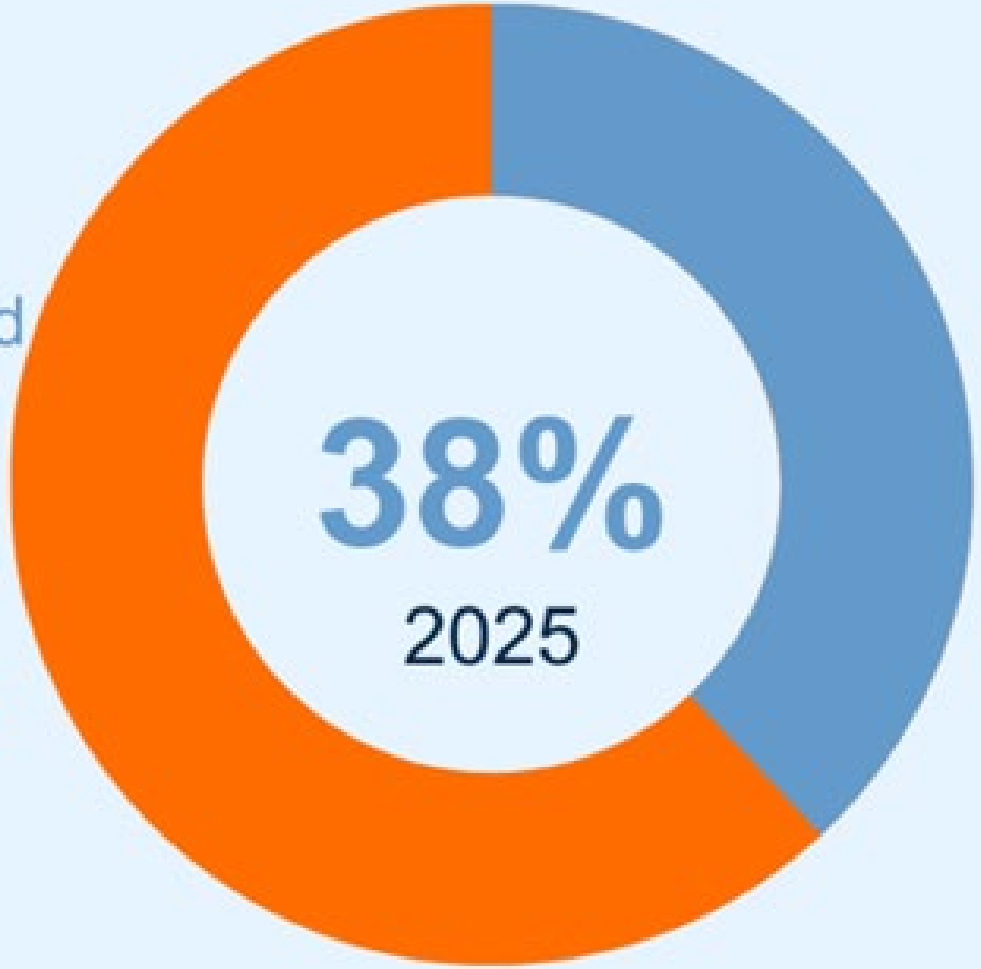
# Hot Topics On Conditional Certification

- Form of notice
  - Email and text messages are becoming increasingly common
- Distributing notice where some employees have arbitration agreements

# FLSA Decertification

**38%**
of motions for decertification granted

**62%**
of motions for decertification denied










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# Risk Mitigation

# Risk Mitigation

**Best Practices For Decertification Of FLSA Collective Actions**

- Key Strategies
- Use of Fact Discovery and Testimony from Opt-In Plaintiffs
- Use of Experts

# Risk Mitigation

**Are Hybrid Cases Obtaining Judicial Approval?**

- An employer's exposure usually is higher under Rule 23 state law claims
  - Opt-out vs. Opt-in
  - Tolling
- Appellate cases have rejected some anti-hybrid arguments
  - *Fisher v. Rite-Aid* - (3d Cir. 2012)
  - *Ervin v. OS Restaurants* - (7th Cir. 2011)
  - *Lindsay v. GEICO* - (D.C. Cir. 2006)

# Risk Mitigation

**Are Hybrid Cases Obtaining Judicial Approval?**

- Holdings:
  - Rule 23 opt-out certification of a state law overtime or minimum wage claim is not "inherently incompatible" with an FLSA opt-in collective action
  - FLSA collective action does not preclude the exercise of supplemental jurisdiction over a Rule 23 state law wage and hour class action
  - The Rules Enabling Act does not preclude a Rule 23 state law wage and hour class action

# Risk Mitigation

**Best Practices For Hybrid Cases**

- Cut off attempts to create hybrid actions by amendment
  - Undue prejudice or delay
  - Futility
  - Supplement jurisdiction
- Use opt-in discovery to defeat Rule 23 certification
- Use Rule 23 discovery to support decertification
- Use manageability problems to fracture both class & collective action

# Risk Mitigation: Mass Arbitration

**Add or update arbitration agreements**

- Reference and consider latest mass arbitration rules (*e.g.*, from AAA, JAMS, etc.)
- Add pre-dispute informal resolution clause
- Add mass arbitration protocol (*e.g.*, provisions for bellwether proceedings, mediation, escape hatch to return to court, staging of subsequent bellwether proceedings, streamlined discovery)




- *Wallrich v. Samsung Electronics America, Inc.*, 2024 WL 3249646, at *9 (7th Cir. July 1, 2024)

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# thank you

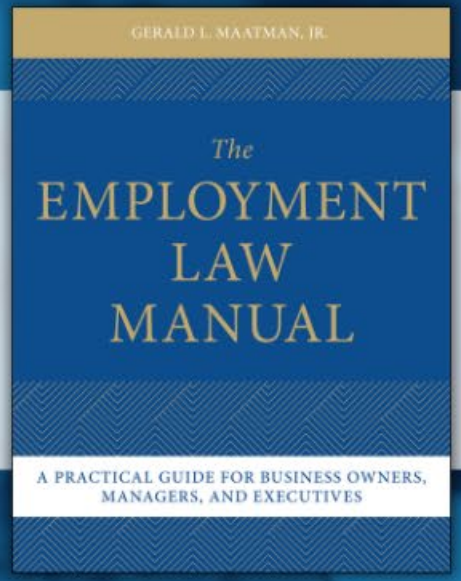



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