

Cybersecurity Tops GCs' List Of Dispute Worries For 2023

By **Emily Sawicki**

Law360 (January 11, 2023, 4:07 PM EST) -- In-house counsel at some of the world's largest and most successful corporations are predicting cybersecurity issues as the No. 1 litigation threat going into 2023, according to a new report from Baker McKenzie.

"The Year Ahead: Global Disputes Forecast 2023," a 36-page study released Tuesday, reflects predictions from the firm's experts together with survey responses from 600 senior legal and risk specialists from large corporations in the U.S., U.K., Singapore and Brazil.

As in last year's forecast, cybersecurity remained a top concern globally, followed by environmental, social and governance, or ESG, issues. This reflects a slow but steady trend, Baker McKenzie experts said.

"With both ESG and cyber ... these very modern, recent legal and risk issues are driving people's concerns — not so much the stuff they might have been worried about 10 years ago," Cyrus Vance, global chair of Baker McKenzie's cybersecurity practice, said in an interview with Law360 after the study's release.

Despite shifting factors, predictions over whether organizations will face disputes have stayed steady among the survey's participants: in both 2022 and 2023, an overwhelming majority — 82% — said they expected the number of legal disputes would stay the same or rise.

Concerns over cybersecurity threats are driving what Vance, a former Manhattan district attorney, called "an increase in pessimism" among corporations, with many left feeling unprepared to defend themselves against evolving cyber threats.

In Vance's view, businesses are facing a threat from cybercrimes that is not unlike the threat COVID-19 posed in March 2020.

"I think what we're seeing is a crisis, and I likened it to the COVID crisis," Vance said. "But unlike COVID, there is no vaccine here. We're attacking this crisis, and it's hitting us so hard, but we really don't yet have the broad-based approach to how to fight it that we ultimately got with COVID. And we don't have the same response [as we had] to COVID." Without an orchestrated response, Vance said, the cyber threat was likely to continue to grow.

More than three-quarters of those surveyed said they felt their organizations were unprepared for the litigation likely to arise in 2023, with only 22% responding that they were "fully" or "very" confident in

their organization's preparedness when it comes to the threat of litigation. Even smaller was the number of respondents who felt "fully" or "very" confident that they would find the right services for litigation or arbitration support, should the need arise: just 13%.

Compared to their European counterparts, American corporations were much more likely to feel a threat from ESG litigation, according to Peter Tomczak, Baker McKenzie's North American litigation and government enforcement practice group chair.

While the global market as a whole is focusing more on ESG policy, American corporations are more likely to see it as a litigation risk. That is largely because European lawmakers have been taking the reins on ESG policymaking in their jurisdictions, while in the United States, it was falling to the courts to decide through litigation, Tomczak said.

That has meant many European companies are years ahead of American corporations in setting policies and goals.

"I think, from an ESG perspective, a lot of our European clients were talking about sustainability, environmental matters and social matters well in advance of ... what you would typically see for a U.S.-based multinational," Tomczak said.

Tomczak said the annual study, now in its sixth year, was a valuable tool for Baker McKenzie to reach counsel "on the front lines" handling litigation issues and track both global and regional trends over the long term. But the firm is careful not to use the forecast as a crystal ball.

"It's very dangerous to say that past events predict the future, for a variety of reasons," Tomczak said. "Now, that said, I think, given that we're looking at global trends and we're hearing from people who literally are on the front lines dealing with the litigation risk from these various issues, I do think it's an indicator of potential trends that are arising in the near-term future."

While last year, COVID-19 was considered the top outside threat to organizations surveyed, this year pandemic concerns fell behind risks from the economic cycle and stock market volatility, which shot up in the ranking of outside threats.

--Editing by Jill Coffey.