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In-House Lawyers Expect More Disputes in 2022, Especially of the Cyber- and ESG-Related Varieties

A new forecast released by Baker McKenzie draws on the responses of 600 in-house lawyers and risk professionals from organizations based in the UK, USA, Singapore and Brazil.

By Ross Todd
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While we here at the Litigation Daily were **asking big firm litigators** what to watch for in the world of disputes in 2022, the folks at **Baker McKenzie** were putting similar questions to in-house legal and risk professionals at large companies.

Late last year, Baker McKenzie surveyed 600 senior legal and risk leaders from organizations based in the UK, USA, Singapore and Brazil whose annual revenue tops $500 million to ask about what they expect to see in 2022. While half the respondents said they expect the volume of disputes facing their organizations to remain flat this year from 2021, a third expect to see an increase. And nearly half – 48% – said they expect COVID-19 to be the biggest external factor driving disputes.

“I think the big takeaway is uncertainty. Uncertainty drives risk,” said **Maurice Bellan**, the managing partner of Baker McKenzie’s Washington, D.C. office and one of a trio of partners who discussed the firm’s 2022 forecast with the Litigation Daily yesterday. “I think COVID-19 is one of the big external factors that both has created uncertainty for our clients and in our regulators,” Bellan said. He said he expects the pandemic to continue to drive certain categories of litigation and enforcement actions.

Courtesy photos

L-R: Jennifer Semko, Maurice Bellan, and Barry Thompson of Baker McKenzie.

Bellan noted that only 35% of respondents to the firm’s survey expressed a high degree of preparedness for litigation within their organizations and only 33% expressed a high level of confidence in being able to find the appropriate litigation services. He said the “transformational pace” of technological change is “supercharging disputes and litigation" and making the landscape even harder for clients to navigate.

To the survey's respondents, cybersecurity was the topic of most concern, with 57% citing it as a risk to their organization in the next 12 months. That figure includes a whopping 78% of the 150 respondents here in the U.S. and 77% of respondents from financial institutions. **Barry Thompson**, the litigation chair for Baker's California offices who is based in Los Angeles, cited the increased cyber risk many companies have faced during the pandemic when we spoke via Zoom yesterday. "The fact that we're all online all day all the time or using a medium like this has created massive cyber risk, which everyone is scared about," Thompson said.

The related category of data disputes was the second-most cited risk, with 46% of respondents citing it. When those two categories were combined, nearly 72% of respondents considered cybersecurity and data a potential source of disputes in the coming year. Coming in right behind the combined cyber and data category were issues tied to environmental, social and governance disputes, with a combined risk rating of 67%, according to the forecast, which **the firm released yesterday.**

"These two broad categories represent the two standout disputes risks for most companies in the next twelve months," the forecast concluded. "They share common features that elevate their importance: significant reputational risk, fast-moving issues, regulatory interest and global impact."

Jennifer Ancona Semko, the chair of the Washington, D.C. office's litigation and government enforcement practice, said the firm has been working with clients on preparing for litigation well before its filed, building on research conducted over the past couple of years and data collected from the firm's **Litigation Intelligence Tool**, an online self-assessment portal companies can use to track their litigation preparedness compared to other companies of their size, industry and geography.

In **a separate survey** of 400 legal and compliance professionals the firm conducted last year, 92% of respondents said they were aware of growing litigation risks and would benefit from a more coordinated and comprehensive approach to managing them. However, 70% said they chose not to identify specific litigation risks for fear of incurring higher costs for their organizations. Semko, who also co-chairs the firm's North American commercial litigation subgroup, said she thinks the opposite is true, and investing in litigation preparedness can actually save clients money in the long run. She pointed in particular to a client who at the outset of the pandemic had the foresight to pull together hundreds of supply agreements and contracts it had across various business units around the world to evaluate the state of its force majeure provisions.

"That gave them a really good handle on what their rights and obligations were when it came to supply chain disruptions," Semko said. "Disputes started popping up fast and furiously. Thankfully, knock on wood, none proceeded to litigation and I think that was in part because they were so well prepared to respond quickly."