

Litigation against UK businesses expected to rise considerably over next 12 months

LONDON, UK – Almost a half (48%) of UK companies expect to face more litigation during 2006 than they did over the last year, according to a new report¹ published today by international law firm and litigation heavyweight Fulbright & Jaworski. The *2005 Litigation Trends Survey* reveals that UK corporates are working in an increasingly litigious environment. Two-thirds of UK businesses also stated that they had faced court actions in the last 12 months and were particularly concerned about the increasing frequency of product liability cases.

The findings showed however that UK companies are still under less pressure than those based in the US, where three-quarters of respondents have faced at least one court action filed against them over the last year.

The rise in litigation has led to severe concerns about the costs of fighting court action and arbitration. The major message from businesses to external lawyers was “help us control costs,” while nearly one in five businesses surveyed said that cost was their major concern when dealing with disputes that involve litigation. The concern would appear to be justified in light of the US\$8 million per year incurred on litigation costs by the average large corporate surveyed. The median average allotted to litigation from US and UK companies’ overall legal budget was 29%.

Lista Cannon, head of European disputes at Fulbright & Jaworski, commented: “The concern over litigation costs is certainly one point where there is trans-continental agreement. Although the UK system of requiring the losing litigant to pay the winner’s costs can help prevent frivolous litigation out of fear of bearing the other side’s legal bill, our report indicates real concerns over spiralling fees still exist among UK businesses. This anxiety can only be compounded by the increasing number of court actions they anticipate facing.”

Larger organisations and businesses in the property, insurance and healthcare sectors are the most likely to face court actions, according to the report. Companies with US\$1 billion or more in annual revenues face more than 20 times the number of court actions brought against the smallest companies and almost four times the number faced by medium-sized companies. The average company with US\$1 billion in gross revenues faces more than 147 cases at any one time.

The most costly type of litigation for companies in the manufacturing, energy and technology/communications sectors relates to intellectual property (IP), while personal injury litigation and regulatory matters were rated second and third by the energy industry. IP and personal injury litigation took the most time to resolve. In the UK, personal injury claims take an average of 284 days to resolve compared to IP (151 days) and regulatory matters (124 days).

Technology and communication companies in the UK see their biggest risks coming from IP and employment cases, while UK manufacturing and insurance companies were more concerned about the rising trend in group and class actions. Personal injury cases are also on the rise and in the US this category made its first showing at position number three in the report's ranking of most frequently pending case types.

Electronic discovery of evidence is becoming a significant burden in the US, and is beginning to appear on the radar of UK organisations, finds the report. Three-quarters (74%) of all companies surveyed have litigation hold policies in place (these evoke immediate suspension of any scheduled destruction of records in the event of anticipated litigation). Four in five (82%) have written records retention policies in place. The report also revealed that one-third of smaller companies have no written litigation hold policy and one-quarter have no records retention policy, leaving them vulnerable to increasing liabilities from this fast-changing area of the law.

The trend towards greater mediation in UK legal cases following the Woolf Reforms may explain the fact that UK companies (23% of companies surveyed) are much more likely than US companies (13%) to settle matters before court proceedings begin. Approximately 60% of UK companies (compared with 51% in the US) have resolved disputes in a multi-step process that entails direct negotiations between senior executives, mediation and arbitration. Larger companies in particular (94% of companies surveyed) believe that cost savings can be made through dispute escalation.

Graham Simkin, litigation partner at Fulbright & Jaworski, commented: "In the UK the Woolf Reforms have helped to drive more effective case management by the courts, which in turn has helped reduce delays and expedite the procedural steps parties must make before trial. Add to this the emphasis placed on resolution of cases through mediation, particularly in the personal injury and professional negligence areas, and it becomes clear that the disputes landscape has truly changed. Lawyers acting in complex commercial cases must adapt their tactics to accommodate these new rules, and ensure they explore all avenues open to them in order to maintain their clients' edge in the build-up to trial."

Three in five (62%) of all companies are outsourcing all of their litigation to law firms. Respondents who track their legal costs and have a legal budget said that their budgets for all types of legal work were 1% or less of their companies' gross revenues. Legal budgets of 2% of gross revenues or above were most prevalent in the property and technology/communications sectors.

Lista Cannon concluded: "As UK businesses continue to face the challenges of working in a more litigious environment, it is essential that they have the right external legal advisers in place. As concerns mount over the need to control spiralling costs associated with litigation, outside lawyers must demonstrate they have the ability to align their work with their clients' objectives and offer innovative dispute resolution solutions, such as arbitration and mediation, which avoid more costly court action."

About the report

¹Fulbright & Jaworski 2005 Litigation Trends Survey surveyed 354 companies from a wide range of industry sectors. For the first time, this year's survey was extended to include participants from 50 UK companies. Publicly held companies made up 40% of the total sample, and of those 59% are listed on the NYSE, 22% on NASDAQ and 11% on the LSE. For further information or to request additional analysis on specific topics, please contact Graham Simkin at Fulbright & Jaworski at gsimkin@fulbright.com

About Fulbright & Jaworski

Opening in 1972, Fulbright & Jaworski's London office serves as the base for the firm's UK and European practices in international arbitration, transnational disputes and commercial transactions.

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FOR PRESS ENQUIRIES:

Sarah Rowan, Citigate Dewe Rogerson
+44 20 7282 1049 or sarah.rowan@citigatedr.co.uk