

SUE OR BE SUED

∨
FORENSIC AND
LITIGATION
CONSULTING
∧

Legal actions against global corporations are surging across the map, with every kind of company facing suits from regulators, shareholders, employees and competitors.

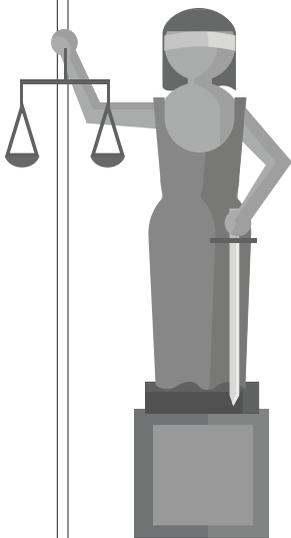
Though the details of legal cases in Europe, Asia and Latin America often aren't a matter of public record (as they are in the United States), surveys suggest a surge in lawsuits against corporations and executives, both within countries and across borders. Corporate counsel from hundreds of international companies based in the United States and the United Kingdom, for example, say they're increasingly embroiled in legal battles, according to the 2011 Fulbright & Jaworski Annual Litigation Trends Survey Report. These companies have broad global exposure, with 43% of respondents having facilities in three or more countries, and almost a quarter operating in 20 or more countries.

"Our survey respondents have a front-row seat to the increased scrutiny brought on by stricter regulatory enforcement," says Stephen Dillard, head of Fulbright's global disputes practice. When times are tough, companies sue to recoup money owed them and laid-off employees seek redress. In the United States, and for larger multinationals in particular, intellectual property and patent litigation also were high on respondents' radar.

Regulatory action, too, seems to be waxing, with 28% of respondents expecting such suits to increase this year. "Businesses are operating in a global climate of intense scrutiny and significant enforcement. Companies are handling increasing numbers of internal investigations and regulatory proceedings, often as a result of whistle-blowing allegations," says Lista M. Cannon, managing partner of Fulbright's London office and co-chair of the firm's International Investigations practice.

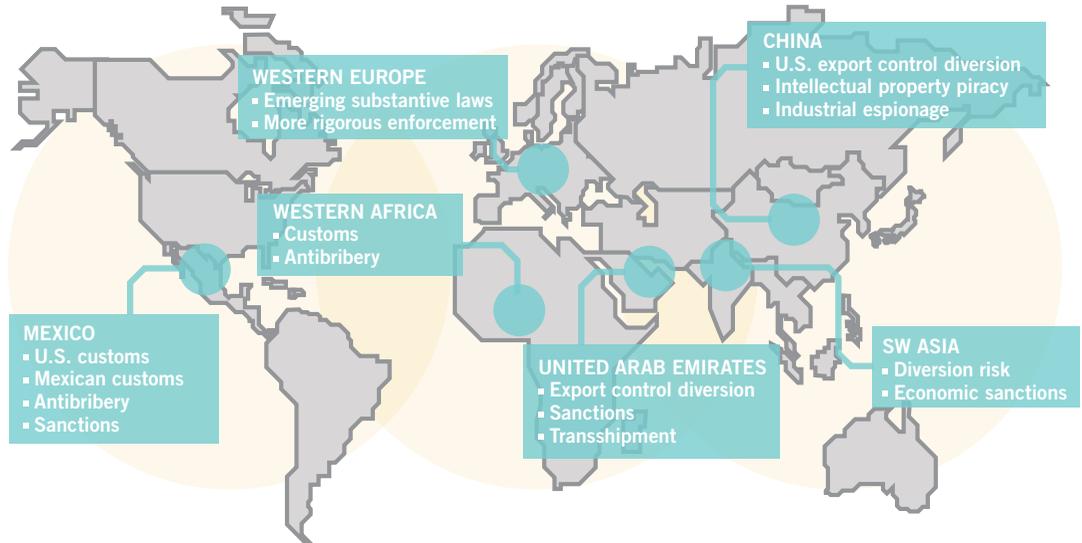
In another sign of greater regulatory scrutiny, securities suit filings in the United States are on track to set a new record this year, according to Advisen Ltd.'s first-quarter report on securities litigation. "The credit crisis was a watershed event in this arena," says John Molka III, the report's author. "The easing of the credit crisis, however, hasn't resulted in fewer securities suits being filed. The elevated level of filings in 2010 and 2011 may represent a 'new normal.'"

As the litigation landscape continues to sort itself out, company executives need to be ready to head off an even more litigious future. Here are some flash points.



Host Countries Are Stepping Up Enforcement

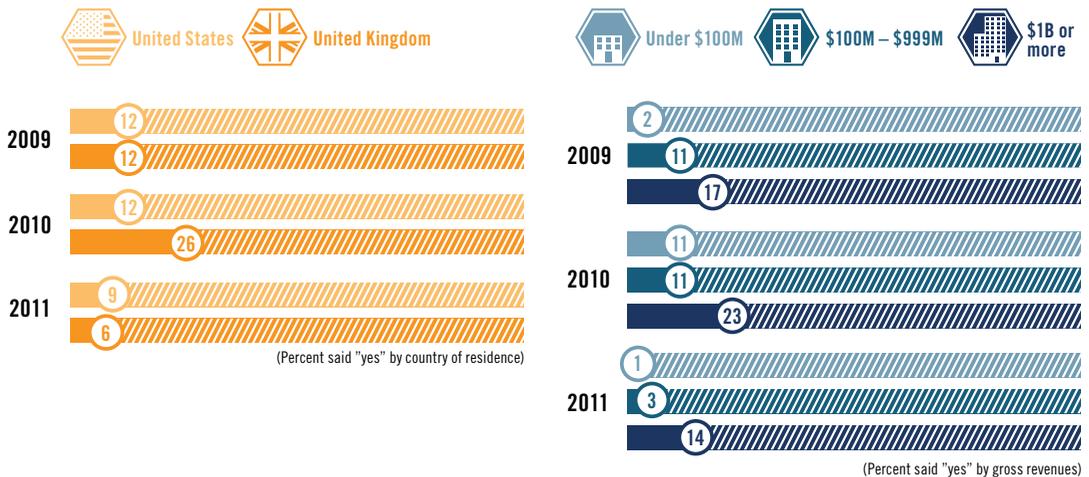
Even in the developing world, once known for lax rules, many nations are increasing regulatory actions involving export controls, customs, labor and employment rules, data privacy and antibribery regulations. Hot spots of international regulatory risk include China, Mexico, Southwest Asia, United Arab Emirates, West Africa and Western Europe.



The U.K. Bribery Act Is Making Itself Felt

April 2010 saw the enforcement of the Anti-Bribery Reform Law and a sharp spike in U.K. companies hiring outside counsel to help with internal investigations. This year the percentage of companies doing so has declined.

COMPANIES THAT HAVE ENGAGED OUTSIDE COUNSEL TO ASSIST WITH A CORRUPTION OR BRIBERY INVESTIGATION IN THE PAST 12 MONTHS

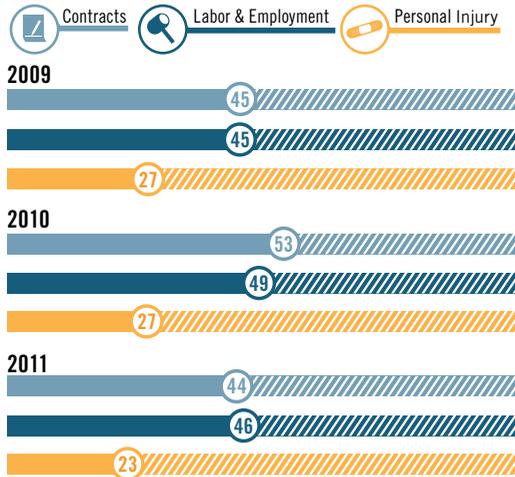


Contracts Continue to Spark Disputes

In the Fulbright & Jaworski survey, more than 40% of U.S. companies and more than half of those in the United Kingdom faced pending legal action related to contracts in 2011. In the United Kingdom, contracts sparked the highest number of suits, whereas labor and employment posed a larger problem in the United States.



MOST NUMEROUS TYPES OF LITIGATION PENDING IN THE UNITED STATES



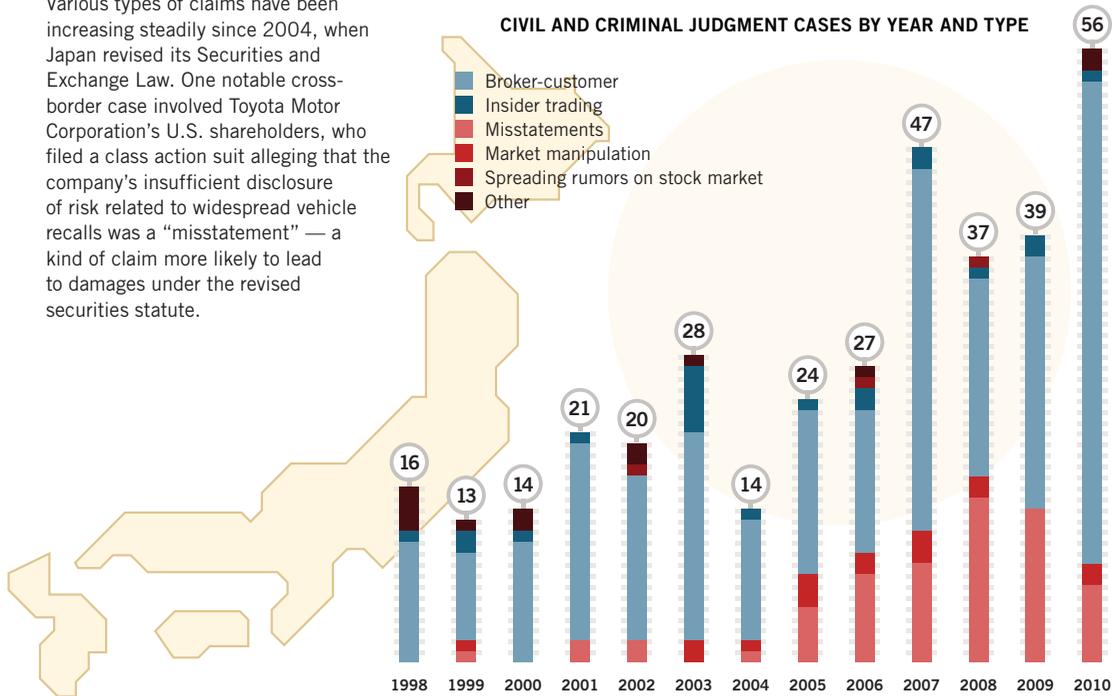
MOST NUMEROUS TYPES OF LITIGATION PENDING IN THE UNITED KINGDOM





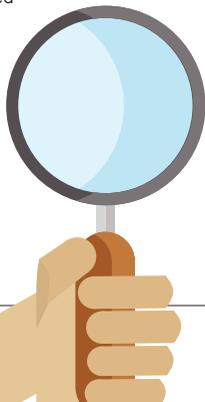
In Japan, Securities Suits Are Also on the Rise

Various types of claims have been increasing steadily since 2004, when Japan revised its Securities and Exchange Law. One notable cross-border case involved Toyota Motor Corporation's U.S. shareholders, who filed a class action suit alleging that the company's insufficient disclosure of risk related to widespread vehicle recalls was a "misstatement" — a kind of claim more likely to lead to damages under the revised securities statute.

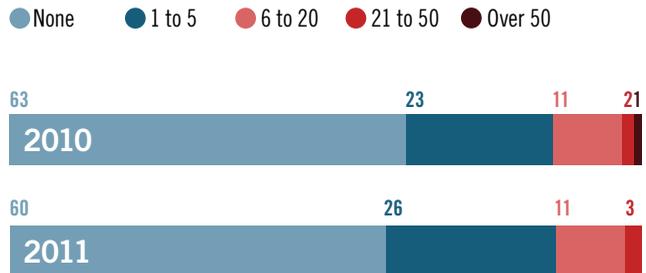


Regulators Increase Scrutiny

More companies are finding themselves the targets of regulatory investigations by a wide range of government agencies in both the United States and the United Kingdom. Some 40% of respondents had attracted government attention, up from 37% in 2010. Approximately 50% of the insurance, energy, healthcare and manufacturing sectors have had at least one regulatory proceeding commenced against them.



HOW MANY REGULATORY PROCEEDINGS WERE COMMENCED AGAINST YOUR COMPANY IN THE PAST 12 MONTHS?



The views expressed in this article are those of the author and not necessarily those of FTI Consulting, Inc., or its other professionals.