

Breach of Contract Litigation Is Way Down—but Greenberg Traurig Stays Strong

There may not be a lot of glory in litigating contractual disputes, but it's bread-and-butter work for many litigators. And the pickings are getting slim.

By Jenna Greene
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It's not just you.

Lawsuits in federal court claiming breach of contract have nosedived, dropping 30% in the last decade.

That's one finding in a new report on contracts litigation by Lex Machina analyzing 146,000 district court cases.

While there may not be a lot of glory in contractual disputes—no one is accused of, say, violating someone's civil rights or making a dangerous product or thwarting competition—it's bread-and-butter work for many litigators.

But pickings these days are slim. Lex Machina legal data expert Karen Chadwick speculates that the fall-off is a by-product of the booming economy. "Contract disputes decline when the economy improves," she said.



Breach of contract fights involving negotiable instruments showed an especially steep drop, falling more than 50% since 2009. Franchise disputes also slowed, with a 41% decline in case filings.

The report looked at cases in which at least one party asserted a breach of contract claim, or at least one claim



Contract Fight

was based on a business tort such as fraud, conversion, or tortious interference with contract between two business entities.

What firms are getting the work? Overall, the report found Greenberg Traurig has had the busiest contracts litigation practice for the past decade, acting as counsel on a total of 1,369 cases since 2009.

"We were proud to learn the results of this report by Lex Machina, which has also recognized Greenberg Traurig as No. 1 U.S. law firm in commercial litigation by cases filed since 2009," said Jeff Scott, who

co-chairs the firm's global litigation practice in an email. "Greenberg Traurig's powerhouse commercial litigation group excels in complex 'bet the company' disputes in diverse industries."

Looking at just the last two years, LeClairRyan filed the most breach of contract cases on the plaintiff's side—192—followed by Baker, Donelson, Bearman, Caldwell & Berkowitz with 155; Fox Rothschild with 154; Greenberg Traurig with 138 and Seyfarth Shaw with 117.

On the defense side, Greenberg Traurig led the pack with 250 representations between 2016 and 2018, followed by McGuireWoods with 218; Reed Smith with 216; Gordon Rees Scully Mansukhani with 204 and Morgan, Lewis & Bockius with 190.

Who are the clients? The short answer: financial institutions.

BMO Harris Bank N.A. filed the most contract suits in the last two years—129—while Branch Banking and Trust was a plaintiff 76 times. On the defense side, Bank of America and Wells Fargo were hit with the most breach of contract suits.

The United States government is also an active litigant in this space. The feds brought 96 cases in the last two years. According to the report, "In many cases, the government was suing to recover on promissory notes issued in connection with loans made by various U.S. agencies such as the Small Business Administration." The government was also named as a defendant in 51 suits.

Here's another stat that may confirm your suspicions: In the last two years, only 3% of breach of contract cases went to trial. Of that tiny universe,

plaintiffs won 530 times, while defendants prevailed just 176 times.

Plaintiffs also fared better on summary judgment, winning 1,155 times, versus 744 for the defense.

What usually happens is the cases settle. Lex Machina found that about two-thirds of breach of contract cases—21,958—settled or were voluntarily dismissed.

To Chadwick, this suggests that breach of contracts litigation "is all about positioning yourself for settlement" (though yes, of course you claim that you're fully prepared to go to trial if necessary).

There's big money involved. From 2016 to 2018, Lex Machina found \$5.2 billion in contracts damages were awarded. The two biggest verdicts since 2016 which included breach of contract claims were Epic Systems v. Tata Consultancy (reduced to the statutory cap of \$280 million) and ZeniMax Media in a suit against Facebook-owned Oculus VR.

The busiest court: The Central District of California, with nearly 7.5% of the filings, followed by the Southern District of New York, the District of New Jersey and the Northern District of Illinois.

The California court distinguishes itself for its speed in handling contracts cases. Nationally, the median time to summary judgment for such cases is 530 days, but it's just 375 days in the Central District of California. The Northern District of Illinois is the slowpoke, with a summary judgment median of 675 days.

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