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December 21, 2012

Clerk of the Court  
United States District Court Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *In re Citigroup Inc. Securities Litigation*, Case No. 07 Civ. 9901 (SHS)

Dear Clerk:

I am writing to you as the person with a power of attorney over my mother's Merrill Lynch account, no.617-62348.

I object to the attorneys' fees in the captioned matter. I do not believe that the work that the attorneys performed entitles them to over ONE HUNDRED MILLION dollars in fees Plus almost Four Million dollars in expenses. I wish to review the fee application, when it is filed, with an attorney to see if the fee is justified and whether there are other matters in the settlement that are objectionable. Therefore, I reserve the right to supplement this objection.

I expect to appear at the hearing in January through counsel, if I do not feel that the fee application justifies the fee.

I have attached evidence that I am a member of the class.

Very Truly Yours,

*Mildred Terry Warren by her son Richard Paul Warren POA*

Mildred Terry Warren by her son, Richard Paul Warren, POA.

cc:

Asad Kudiya, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019

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825 Third Avenue  
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# **EXHIBIT 8**

Law Office of Patrick Wright  
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November 16, 2012

Clerk of the Court  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St  
New York, NY 10007-1312

Re: In re Citigroup Inc. Securities Litigation.  
Case No. 07-Civ. 9901 (SHS)

Dear Clerk:

I enclose an original and a copy of the following document:

Class Members' Objection

Please return the copy of this letter, file-stamped, so that I can keep it in my file. I enclose a self-addressed, stamped envelope for your convenience.

By copy of this letter with attachment, I am informing the parties of the filing of the document.

Thank you.

Sincerely,

  
Kenneth Patrick Wright, Pro Se

cc Ira M. Press, Esq.  
Peter S. Linden, Esq.  
Andrew McNeela, Esq.  
Kirby McInerney LLP  
825 Third Avenue  
New York, NY 10022

Brad S. Karp, Esq.

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Mydocs\secretary\wright\class action\corr\court\dc 11-16-12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE CITIGROUP INC.  
SECURITIES LITIGATION

VS. ) CASE NO. 07 Civ. 9901 (SHS)

**CLASS MEMBERS' OBJECTION**

COME NOW Kenneth Patrick Wright and Hyejin Chung Wright, Class Members, and file this Objection to Proposed Settlement and Plan of Allocation filed in this case and preliminarily approved on August 29, 2012. Kenneth Patrick Wright and Hyejin Chung Wright, a married couple, hereinafter termed "Objectors," would show as follows:

**1. Objectors' Are Members of the Class**

Objectors purchased 73 shares of Citigroup, Inc. common stock on May 9, 2007. See attached Proof of Claim and Release, with supporting documentation. Objectors have never sold the stock and still possess it. *Id.* The relevant period under the Settlement Agreement is from February 26, 2007 to April 18, 2008. The Objectors are members of the class.

**2. The Notice of Settlement Agreement does not provide enough information for Class Members to determine if the Allocation method is fair to class members who purchased shares between 2-26-07 to 11-4-07 and did not sell the shares.**

Objectors bought their 73 shares of common stock on May 9, 2007, and have never sold the shares. See Statement for Account, May 1, 2007 to May 31, 2007, attached to Proof of Claim form. The average cost of Objectors' 73 shares was \$53.93. *Id.* The total cost of the 73 shares paid by Objectors is \$3936.62. *Id.*

The Notice of Settlement Agreement states that members of the class who did not sell their shares during the period of February 26, 2007 to July 17, 2008, the recognized loss will be

determined by the following formula:

A. For shares held at the end of trading on July 17, 2008, the Recognized Loss shall be that number of shares multiplied by the lesser of:

- (1) the applicable purchase/acquisition date artificial inflation per share figure, as found in Table A below; or
- (2) the difference between the purchase/acquisition price per share and \$21.07. Notice, p. 7.

The amount in Table A for class members who purchased shares in the period of 2/26/2007 to 11/4/07, is \$4.94. Id.

Objectors purchased their shares for \$53.93. \$53.93 minus \$21.07 equals \$32.86. Because \$4.94 is less than \$32.86, the multiplier in Objectors' case will be \$4.94.

Table A sets forth the multiplier amounts relevant to other purchasers of Citigroup, Inc. stock. Purchasers of the stock on 11/5/07 will have the multiplier amount of \$3.38 applied to the number of shares purchased. Id. Purchasers of stock from 11/6/07 to 11/18/07, will have the multiplier rate of 1.72 applied. Id. Purchasers of stock from 11/19/07 to 1/14/08 will have the rate of \$1/15 applied. Purchasers of stock on 1/15/08 will have the rate of \$0.71 applied. Finally, purchasers of stock between 1/16/08 and 4/18/08 will have the amount of \$0.10 applied.

Objectors contend that the Notice provides too little information to determine if the multiplier amounts are reasonable and fair to each categorized purchase date period. How did the parties arrive at the multiplier rates set forth in Table A, under the heading "Artificial Inflation Per Share"? How did the parties determine the duration of each categorized period? How do the parties justify using the "lesser amount" of the "difference between the purchase/acquisition price per share and \$21.07" and the multiplier rate set forth in Table A? How do the parties determine that class members will receive only \$.019 per share? Notice, p. 1.

Without more explanation, the Proposed Settlement's plan of allocation is not fair and adequate, and should not be approved.

The ultimate test of a plan's allocation of benefits is whether or not it is fair and adequate. "To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized -- namely, it must be fair and adequate." *Maley v. Global Technologies Corp.*, 186 F.Supp.2d 358, 367 (S.D.N.Y. 2002). "An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Id.* The lack of detail and explanation in the plan's allocation formula prevents Objectors from being able to determine if the allocation is fair to them.

The Court "determines a settlement's fairness by examining the negotiating process leading up to the settlement as well as the settlement's substantive terms." *Beane vs. Bank of NY Mellon*, 2009 U.S. Dist. LEXIS 27504, at 6 (S.D.N.Y. 2009). Courts must ensure: (1) that the settlement was the product of arm's length negotiations; and (2) that class counsel "possessed the experience and ability, and . . . engaged in the discovery, necessary to effectively represent . . . the class's interests." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). The Court also determines whether the settlement is fair, adequate and reasonable by considering the nine factors enumerated initially in *City of Detroit v. Grinnell Corp.* 495 F.2d 448, 463 (2d Cir. 1974).

In the instant case, the few pleadings on file do not show that the parties have engaged in arm's length negotiations. The case, admittedly, has been pending for several years. Very few substantive motions have been filed that reveal the rationale for the proposed settlement, however. No motions for summary judgment, motions to quash, motions to compel discovery, and motions to protect privilege are on file. The parties describe depositions of 50 people or more without saying what information was discovered. Doc. 154, p. 10. The lack of detail in the

pleadings on file, rightly or wrongly, give the impression of collusion between the parties. "The Court has the duty to ensure that the settlement is not the product of collusion." *Banyal v. Mazur*, 2008 U.S. Dist. LEXIS 93593 at \*9 (S.D.N.Y. 2008). The class members have no assurance that the Proposed Settlement is not simply a form of inoculation, a case in which the Defendant is merely settling as many claims as possible for as low a price as possible.

Objectors contend that expert evidence is required to substantiate the settlement. The class members may appreciate the representation of experienced counsel that the agreement is fair. Without evidence that the agreement is fair, however, Objectors do not have factors reliable enough to agree with it. See, generally, *In re Bear Stearns Companies, Inc. Securities, Derivative, and ERISA Litigation*, 2012 U.S. Dist. LEXIS 161269 at \*25 (S.D.N.Y. 2012) ("The Plan, which was prepared by experienced counsel in concert with a damages expert, provides for the distribution of the settlement proceeds on a pro rata basis based on a formula tied to liability and damages, without favoring any particular type of security."). None of the documents on file with the Court support the allocation formula set forth in the Proposed Settlement.

**3. Objectors contend that the Attorney's Fee Allowed by the Proposed Settlement and Plan of Allocation is too High.**

A party seeking attorney's fees bears the "burden of establishing entitlement to an award." *Cruz v. Local Union No. 3 of the IBEW*, 34 F.3d 1148, 1160 (2d Cir. 1994). The Plaintiff's lawyers in this case, then, must justify the fee they seek. According to the Proposed Settlement and Plan of Allocation, the attorney's fees will be 17% of the Settlement Fund, \$590,000,000.00. Notice, p. 10. 17% of the Settlement Fund is \$100,300,000.00. The class members will receive \$0.19 per share in this case. The Plaintiffs' attorneys will receive more than 100 million dollars. The Objectors contend the proposed attorney's fee is too high.

To determine the reasonableness of fees, the Court "examines Class Counsel's request in light of the Godberger factors." Banyal, *supra*, at \*6. The Court arrives at a fair fee by using "both the percentage of fund and the lodestar method." *Id.* A "windfall" for Class Counsel is to be avoided. "Starting an analysis with a benchmark could easily lead to routine windfalls." *Goldberger v. Integrated Resources*, 209 F.3d 43, 51 (2d Cir. 2000). The fact that a large settlement amount has been achieved should also not serve as a basis for a large percentage fee award. "Obviously, it is not ten times as difficult to prepare, and try or settle a 10 million dollar case as it is to try a 1 million dollar case." *In re Union Carbide Corp.*, 724 F.Supp. 160, 166 (S.D.N.Y. 1989).

The risk of the litigation is "perhaps the foremost factor" in establishing the proper fee. *Id.*, at 54. Objectors contend that the risk of litigation in the instant case was low. As the Goldberg case makes clear, "At least one empirical study has concluded that "there appears to be no appreciable risk of non-recovery" in securities class actions, because "virtually all cases are settled." *Id.*, at 51, quoting "Do the Merits Matter? A Study of Settlements in Securities Class Actions, 43 *Stan. L. Rev.* 497, 578 (1991). Given the low risk of non-recovery in this case, in conjunction with the paucity of litigated issues decided by the Court in this case, a fee of 17% of total recovery is too much. Class counsel will achieve a windfall. Class members will receive a pittance.

Other cases limit the amount of attorney's fees in cases of large recoveries. "Indeed, empirical analyses demonstrate that in cases like this one, with recoveries of between \$50 and \$75 million, courts have traditionally accounted for these economies of scale by awarding fees in the lower range of about 11% to 19%. *Goldberg. supra*, at 51. The Goldberg court ended up awarding attorneys fees in the amount of 4% of the recovery. *Id.*, at 52. In another securities

case, the court awarded only fees of 5% of the \$75 million dollar settlement. In *Re Wachovia*, 2012 U.S. Dist. LEXIS 97910 at \* 16 (S.D.N.Y. 2012). Objectors contend that the economies of scale in this case require a lesser percentage of attorney's fees than 17%. The requested fees should also be cross-checked using the lodestar method.

WHEREFORE, the Objectors request that the Court analyze the Proposed Settlement and Plan of Allocation in a manner that best enhances the value of the Objectors' settlement proceeds.

Respectfully submitted,



Kenneth Patrick Wright

10888 Shady Trail  
Dallas, Texas 75220

Telephone No.: 214-745-1080

Telefax No.: 214-745-1140

#### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was sent to the following persons on the 16th of Nov., 2012, by certified mail, RRR, and/or fax, and/or first class mail, and/or through the Court's electronic filing system.:

Clerk of the Court  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St  
New York, NY 10007-1312

Ira M. Press, Esq.  
Peter S. Linden, Esq.  
Andrew McNeela, Esq.  
Kirby McInerney LLP  
825 Third Avenue  
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Brad S. Karp, Esq.  
Richard A. Rosen, Esq.  
Susanna Buerger, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-66064

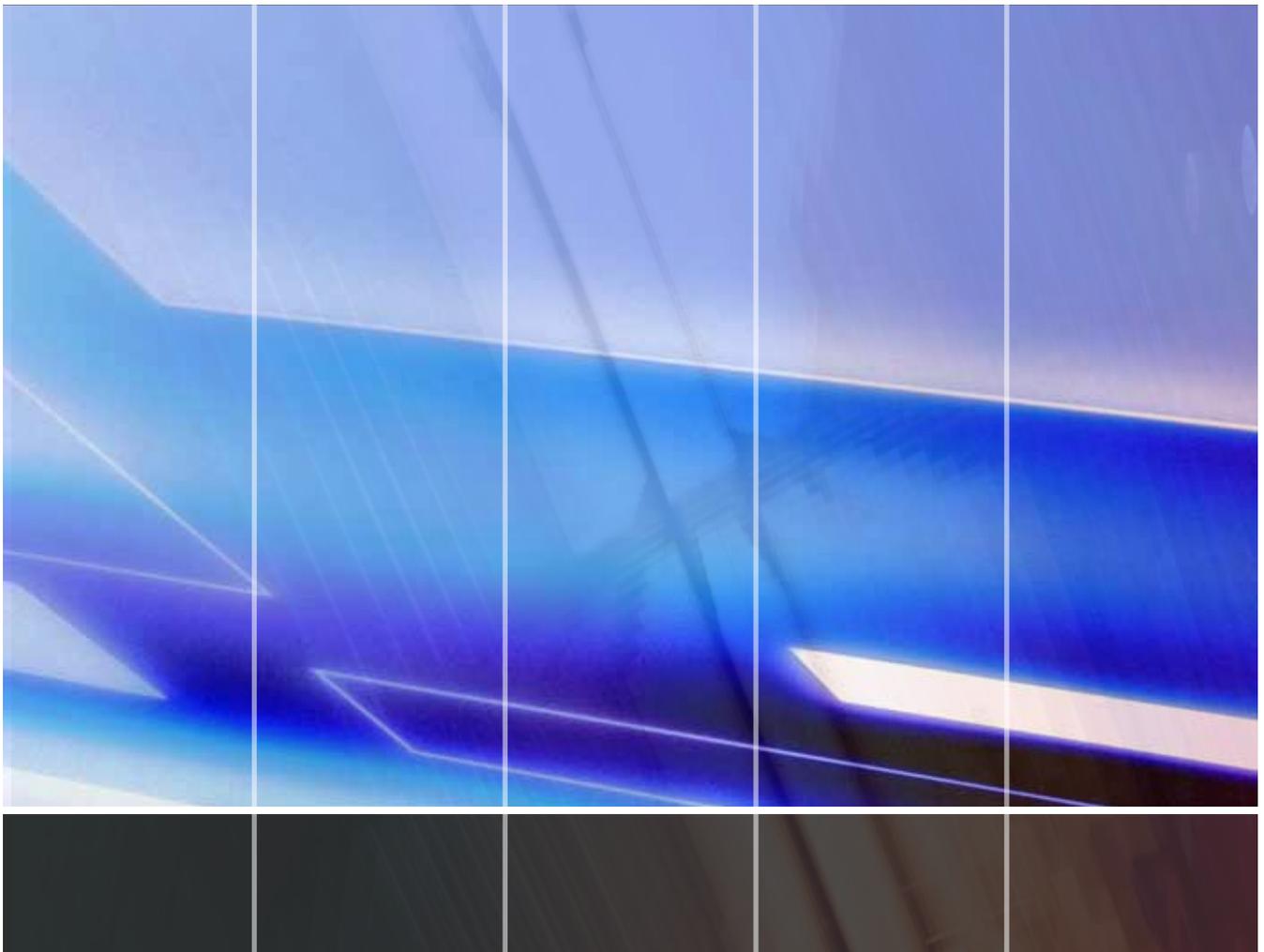
  
Kenneth Patrick Wright

# **EXHIBIT 9**

CORNERSTONE RESEARCH

# Securities Class Action Filings

2011 Year in Review



### Research Sample

- The Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research has identified 3,415 federal securities class action filings between January 1, 1996, and December 31, 2011.
- These filings include 313 IPO Allocation filings, 68 Analyst filings, 25 Mutual Fund filings, 40 Options Backdating filings, 24 Ponzi filings, and 208 Credit-Crisis filings; the last category includes 21 Auction Rate Securities filings.
- The sample used in this report is referred to as the “Classic Filings” sample and excludes IPO Allocation, Analyst, and Mutual Fund filings.
- Multiple filings related to the same allegations against the same defendant(s) are consolidated in the database through a unique record indexed to the first identified complaint.



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## OVERVIEW

Federal securities fraud class action filing activity increased in 2011. For the full year of 2011, there were 188 filings compared with 176 in 2010. The number of class actions filed was 3.1 percent below the annual average of 194 filings observed between 1997 and 2010 (Figure 1). Filing activity in the second half of the year equaled the activity in the first half. A total of 94 federal securities fraud class actions (filings, class actions, or cases) were filed in both the first and second halves of 2011. Building on a trend first seen last year, 43 of the filings in 2011 were associated with merger and acquisition (M&A) transactions.

Litigation against Chinese issuers listed on U.S. exchanges through reverse mergers represented a major component of filings activity during 2011, although evidence indicates that this type of litigation is subsiding. In 2011, 33 such class actions were filed, constituting 17.6 percent of all federal securities class actions. This activity occurred predominantly in the first half of the year when 24 of these actions were filed; only nine were brought in the last six months, including five filed in the last three months of the year. In 2010, there were nine such class actions filed. Figure 5 illustrates the differences in allegations between Chinese reverse merger filings since 2010 and other Classic Filings, and indicates that complaints relating to Chinese reverse mergers statistically are more likely to allege violations of generally accepted accounting principles (GAAP) and financial restatements and are less likely to allege insider trading.

As the peak of the financial crisis recedes, filings related to the crisis also continue to decline. There were only three such filings in 2011, a decrease from 13 in 2010 and 53 in 2009. Overall filings in the financial sector also decreased, as financial companies were defendants in 13.3 percent of filings in 2011 compared with 24.7 percent in 2010. The Heat Maps of S&P 500 Securities Litigation™ show that in 2011, only 1.2 percent of S&P 500 companies in the Financials sector were named defendants in a class action compared with the 10-year historical average ending December 2010 of 11.7 percent. These companies represented 6.9 percent of the Financials sector's market capitalization, well below the historical average of 24.3 percent.

The market capitalization declines associated with end-of-class-period announcements have increased from 2010 levels but remain below the historic average. The total Disclosure Dollar Loss (DDL) of \$106 billion in 2011 represented a 47.2 percent increase from 2010 but remained 17.8 percent below the average of \$129 billion observed between 1997 and 2010. There were four "mega DDL" filings in 2011 associated with end-of-class market capitalization losses exceeding \$5 billion. These filings represented 58.9 percent of the DDL Index™ in 2011. Market capitalization declines during the class period increased slightly in 2011. The total Maximum Dollar Loss (MDL) of \$493 billion in 2011 was 4.0 percent above the total MDL in 2010 and 27.5 percent below \$680 billion, the average MDL observed between 1997 and 2010. The "mega MDL" filings with losses of more than \$10 billion decreased in number in 2011 but increased in dollar value. Nine mega MDL filings represented 80.2 percent of the MDL Index™ in 2011, while 14 mega MDL filings represented 79.1 percent of the MDL Index™ in 2010.<sup>1</sup>

**Figure 1**

### CLASS ACTION FILINGS SUMMARY

	Average (1997–2010)	2010	2011
Class Action Filings	194	176	188
Disclosure Dollar Loss (\$ Billions)	\$129	\$72	\$106
Maximum Dollar Loss (\$ Billions)	\$680	\$474	\$493

<sup>1</sup> Disclosure Dollar Loss and Maximum Dollar Loss are defined in the Market Capitalization Losses section of this report.

**OVERVIEW** *continued*

New for the *2011 Year in Review*:

- An analysis of filings related to the Foreign Corrupt Practices Act (FCPA). The FCPA was passed in 1977 and holds any company with securities issued in the United States liable for penalties if that company engaged in bribery of foreign officials or violated certain accounting requirements. Figure 10 documents the level of private securities class action litigation related to settled or pending FCPA investigations by the Securities and Exchange Commission (SEC) or the Department of Justice (DOJ).
- An analysis of the relative frequency that a class action advanced through various stages of litigation. Using a sample of Classic Filings from 1997 to 2011,<sup>2</sup> we find that 75 percent of filings reached a ruling on motion to dismiss, and only 8 percent later reached a ruling on summary judgment (Figure 16).
- An analysis of the relative experience of judges who presided over class actions between 1996 and 2011. Figure 17 indicates that relatively few judges have presided over multiple class actions. Figure 18 shows that no judge has presided over more than three cases that reached a ruling on summary judgment.
- An analysis of plaintiff law firm activity. Figure 19 shows the plaintiff law firms most commonly named lead counsel in 2009 and 2010. One firm, Robbins Geller Rudman & Dowd, represented the most class action plaintiffs in both years.

A notable development in 2011 was the finalization of the rules of the Dodd-Frank Whistleblower Program. The SEC published its annual report on the Dodd-Frank Whistleblower Program in November 2011, indicating that the SEC had received 334 tips since the rules were finalized on August 12, 2011.<sup>3</sup> These tips spanned 37 states and 11 different foreign countries. About 9.6 percent of the tips received were related to tips involving foreign companies.

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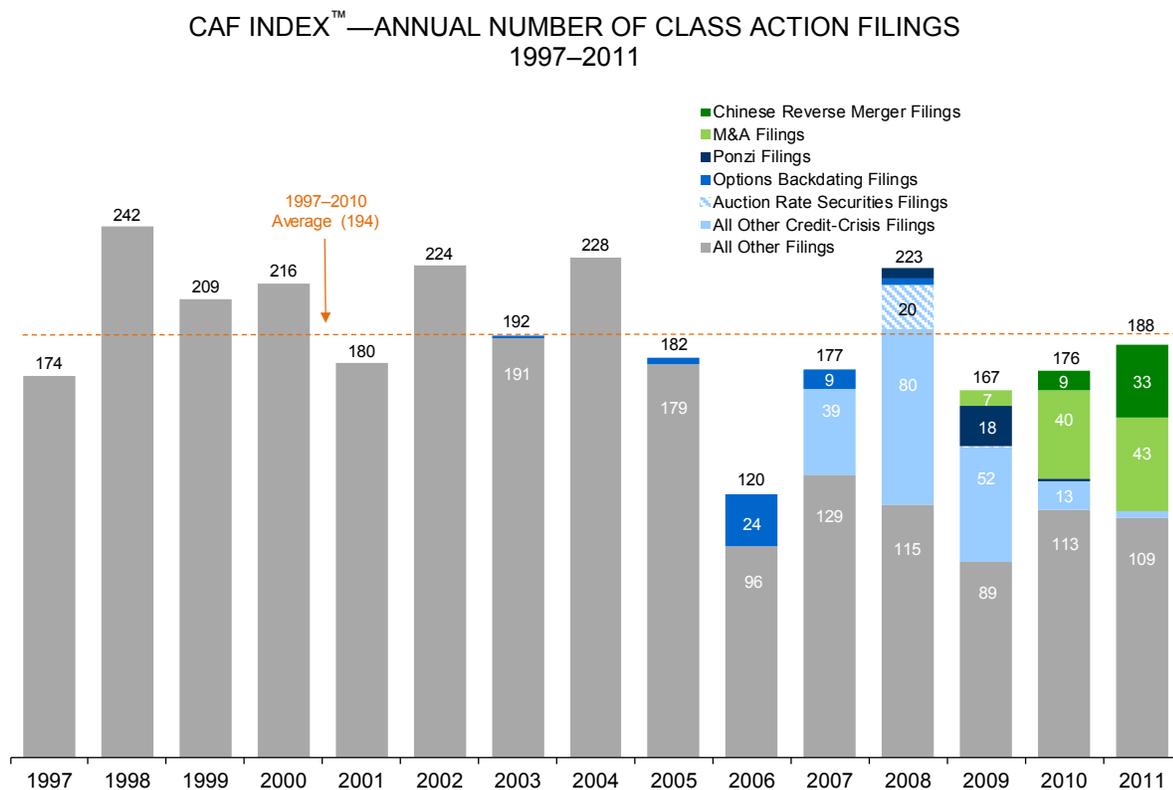
<sup>2</sup> Data regarding the last stage of litigation are available for 94.3 percent of Classic Filings.

<sup>3</sup> "Annual Report on the Dodd-Frank Whistleblower Program, Fiscal Year 2011," U.S. Securities and Exchange Commission, <http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf>.

## NUMBER OF FILINGS

The Class Action Filings Index™ (CAF Index) reports 188 filings in 2011, an increase of 6.8 percent from 176 filings in 2010 (Figure 2). Of these 188 filings, 33 were related to Chinese reverse mergers, an increase from nine filings in 2010. Consistent with a trend first observed in 2010, filings related to M&A transactions continued to constitute a large percentage of total filings, accounting for 22.9 percent in 2011. In 2010, M&A filings made up 22.7 percent of all filings. The number of filings related to the credit crisis continued to drop. Three were filed in 2011, a decrease from 13 filings in 2010. In 2011, there were no filings related to auction rate securities or Ponzi schemes.

**Figure 2**



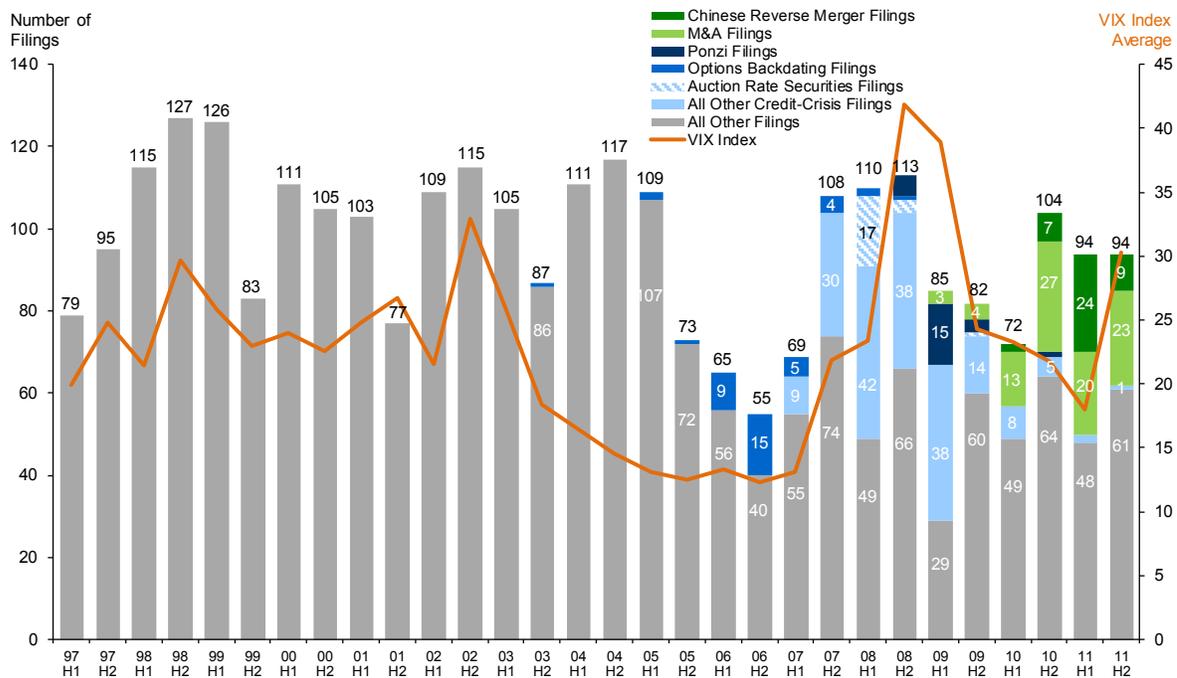
The number of filings related to M&A transactions increased slightly in 2011. There were 20 such filings in the first half of 2011 and 23 filings in the last six months of the year. Cash transactions were the most commonly contested transactions, representing 76.7 percent of all M&A filings. Stock-for-stock transactions appeared in 14.0 percent of M&A filings. The remaining filings were related to cash and stock transactions.

**NUMBER OF FILINGS *continued***

In the second half of 2011, the total number of filings was the same as in the first six months of the year despite a 62.5 percent decrease in Chinese reverse merger filings, which peaked with 24 filings in the first half of 2011. Over the last 18 months, M&A filings comprised 24.0 percent of all filings. Continuing the recent trend of fewer credit-crisis filings, there was only one such filing in the second half of 2011.

**Figure 3**

**CAF INDEX™—SEMIANNUAL NUMBER OF CLASS ACTION FILINGS AND CBOE VOLATILITY INDEX® (VIX) 1997–2011**



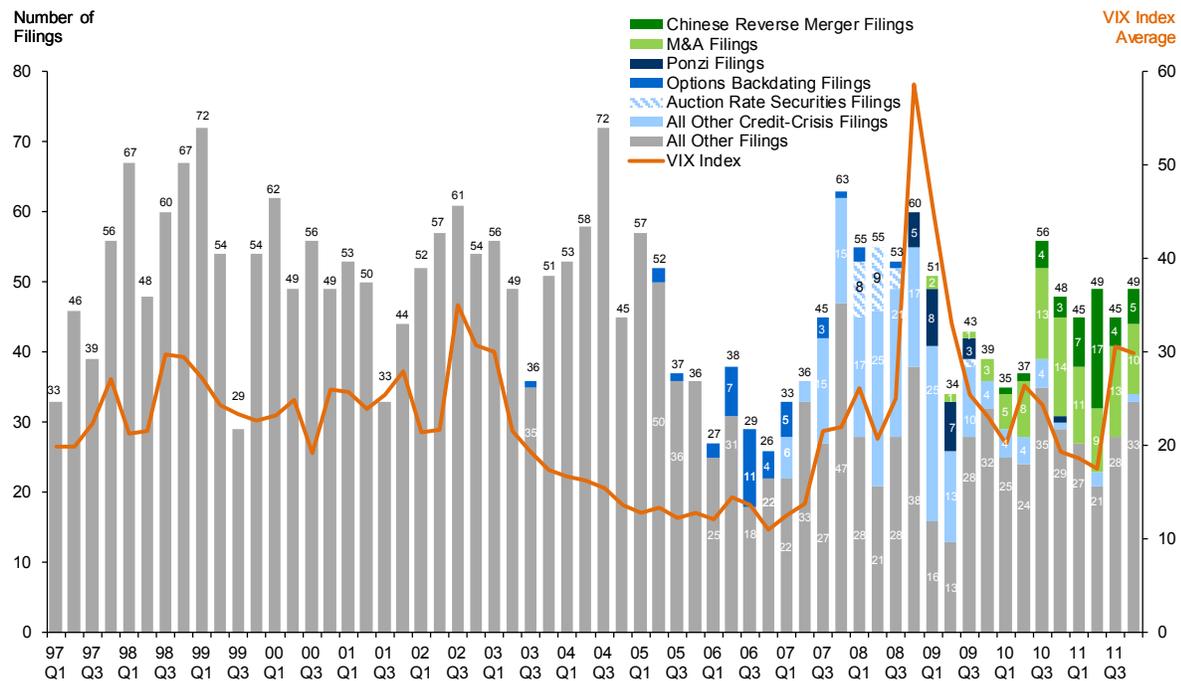
**NUMBER OF FILINGS *continued***

The number of filings in each quarter in 2011 was less volatile than in 2010. The quarterly number of filings ranged from 45 to 49 throughout 2011.

Securities litigation activity can be correlated with stock market volatility. The fourth quarter of 2008, a historic peak in stock market volatility as measured by the Chicago Board Options Exchange (CBOE) Volatility Index® (VIX), was associated with a flurry of securities class actions; in comparison, during the fourth quarter of 2006, the VIX was at its lowest level since its inception in the 1990s and was accompanied by a historically low number of filings (Figure 4). Over the last three quarters of 2011, the number of traditional filings has increased steadily with the VIX Index. The number of Chinese reverse merger filings and M&A filings appears unrelated to this measure of stock market volatility; these cases accounted for more than one-half of all filings in the second quarter of 2011 when the VIX Index was at its lowest level in the last three years. This suggests that Chinese reverse merger and M&A filings are driven by factors other than stock market volatility. It is likely that Chinese reverse merger filings will turn out to be a nonrecurring event in the securities litigation landscape, similar to the prior IPO Allocation filings, Mutual Fund filings, and Options Backdating filings. In a companion study, Cornerstone Research has found that mergers and acquisitions are routinely challenged in shareholder litigation, some of which are being filed in federal courts.<sup>4</sup> It is likely that these cases have very different driving factors and underlying economics than traditional securities class actions.

**Figure 4**

**CAF INDEX™—QUARTERLY NUMBER OF CLASS ACTION FILINGS AND CBOE VOLATILITY INDEX® (VIX) 1997–2011**



<sup>4</sup> *Recent Developments in Shareholder Litigation Involving Mergers and Acquisitions*, Cornerstone Research, January 2012, [http://www.cornerstone.com/files/upload/Shareholder\\_MandA\\_Litigation.pdf](http://www.cornerstone.com/files/upload/Shareholder_MandA_Litigation.pdf).

## STATUS OF CHINESE REVERSE MERGER FILINGS

Since 2010, there have been 42 class actions filed against companies based in China that gained access to the U.S. markets through a process known as a reverse merger.<sup>5</sup> Filings against such companies peaked in the first half of 2011 but have subsequently decreased, with only nine being filed in the second half of the year (Figure 3).

In order to determine whether filings involving Chinese reverse mergers had allegations that significantly differ from the allegations in other cases, a proportions test was undertaken (Figure 5).<sup>6</sup> Between July 1, 2010, and December 31, 2011, Chinese reverse merger filings (40 filings) were significantly more likely than other filings (183 filings, excluding M&A filings) to contain alleged GAAP violations, unreliable financial statement disclosures, and restatements. Such filings were also significantly less likely to have insider trading allegations, as none had such allegations. Furthermore, 97.5 percent of Chinese reverse merger filings included allegations of Rule 10b-5 violations, but this is not statistically different from the group of all other filings (87.4 percent). Note that all 40 Chinese reverse merger filings involved equity securities. At the same time, 10.9 percent of the 183 filings in the comparison group include only nonequity securities, such as bonds and mortgage-backed securities. Of these filings, 55.0 percent did not have Rule 10b-5 allegations.

**Figure 5**

### CHINESE REVERSE MERGER FILINGS AND OTHER FILINGS BY ALLEGATION TYPE 7/1/10–12/31/11

Allegation Type	Percentage of Chinese Reverse Merger Filings with Allegation	Percentage of Other Filings (Excluding M&A) with Allegation
GAAP Allegations	87.5%	29.0% *
Rule 10b-5	97.5	87.4
Section 11	12.5	16.4
Section 12	15.0	10.9
Underwriter	15.0	14.2
Misrepresentations in Financial Documents	97.5	92.3
False Forward-Looking Statements	57.5	71.6
Insider Trading	0.0	22.4 *
Unreliable Financial Statement Disclosures	27.5	7.7 *
White Collar	27.5	16.4
Internal Control Over Financial Reporting Allegation	37.5	26.8
Internal Control Over Financial Reporting Disclosure	10.0	4.9
Bankruptcy	0.0	4.4
Auditors as Defendants	5.0	3.8
Restatement	20.0	7.7 *

\* Indicates a statistically significant difference at the 5 percent level from the corresponding non-Chinese reverse merger percentage.

<sup>5</sup> For further discussion on Chinese Reverse Mergers, see *Investigations and Litigation Related to Chinese Reverse Merger Companies—Financial, Economic, and Accounting Questions*, Cornerstone Research, July 2011, [http://www.cornerstone.com/files/upload/Litigation\\_Related\\_to\\_Chinese\\_Reverse\\_Mergers.pdf](http://www.cornerstone.com/files/upload/Litigation_Related_to_Chinese_Reverse_Mergers.pdf).

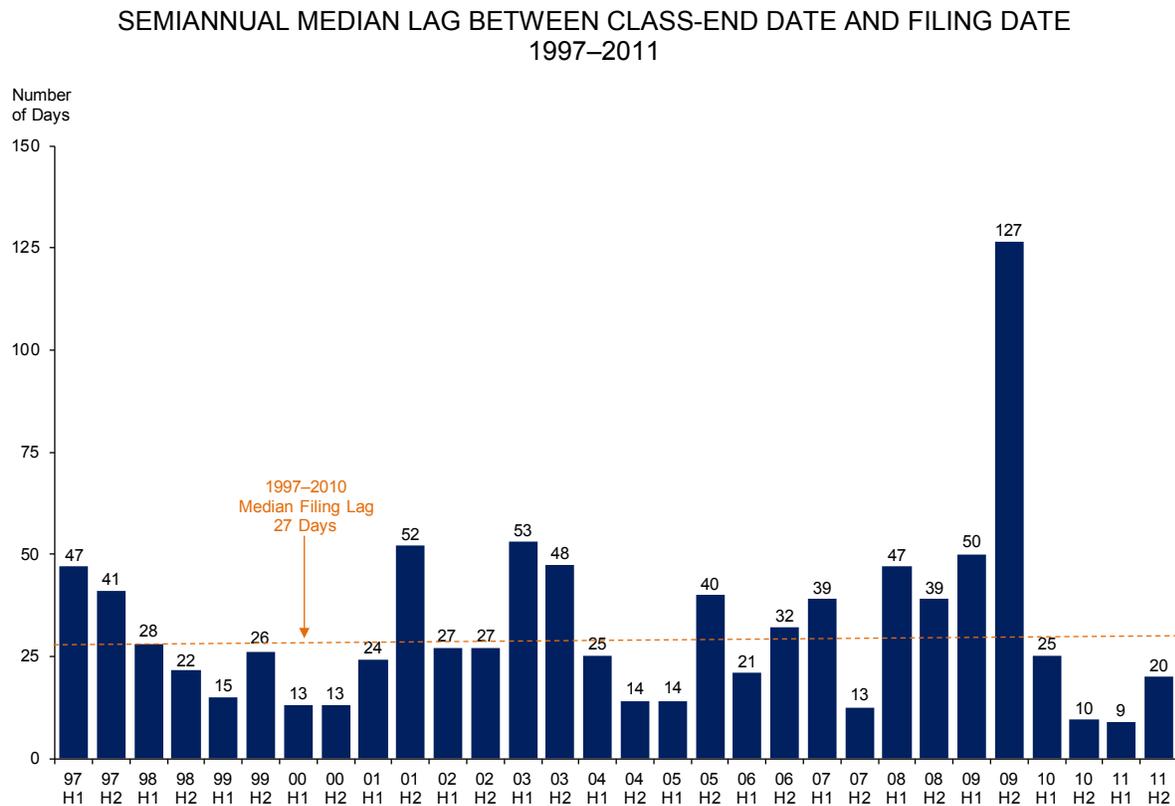
<sup>6</sup> Significance was defined at the 95 percent level for a two-tailed test. Based on Miles Hollander and Douglas A. Wolfe, *Nonparametric Statistical Methods*, 2<sup>nd</sup> Edition (John Wiley & Sons, Inc., 1999) p. 459.

## FILING LAG

In the second half of 2011, the median lag between the end of the alleged class period and the filing date of the lawsuit rose to 20 days, more than double the median lag of nine days in the first half of 2011. This represented the first increase in median lag since the second half of 2009 (Figure 6). Despite the increase, it is still below the historical median lag of 27 days for the 14 years ending December 2010. This increase is associated with an increase in the number of filings with a six-month or longer lag. There were 17 such filings in the second half of 2011 compared with 11 such filings in the first half of 2011 and 12 such filings in the second half of 2010. Historically there has been an average of 18 such filings per six-month period since 1997.

M&A filings tend to be filed quickly after the end of the alleged class period and have a lower median lag. If M&A filings were excluded from the analysis for 2011, the median filing lag would increase to 17 and 44 days for the first and last six months of 2011, respectively.

**Figure 6**

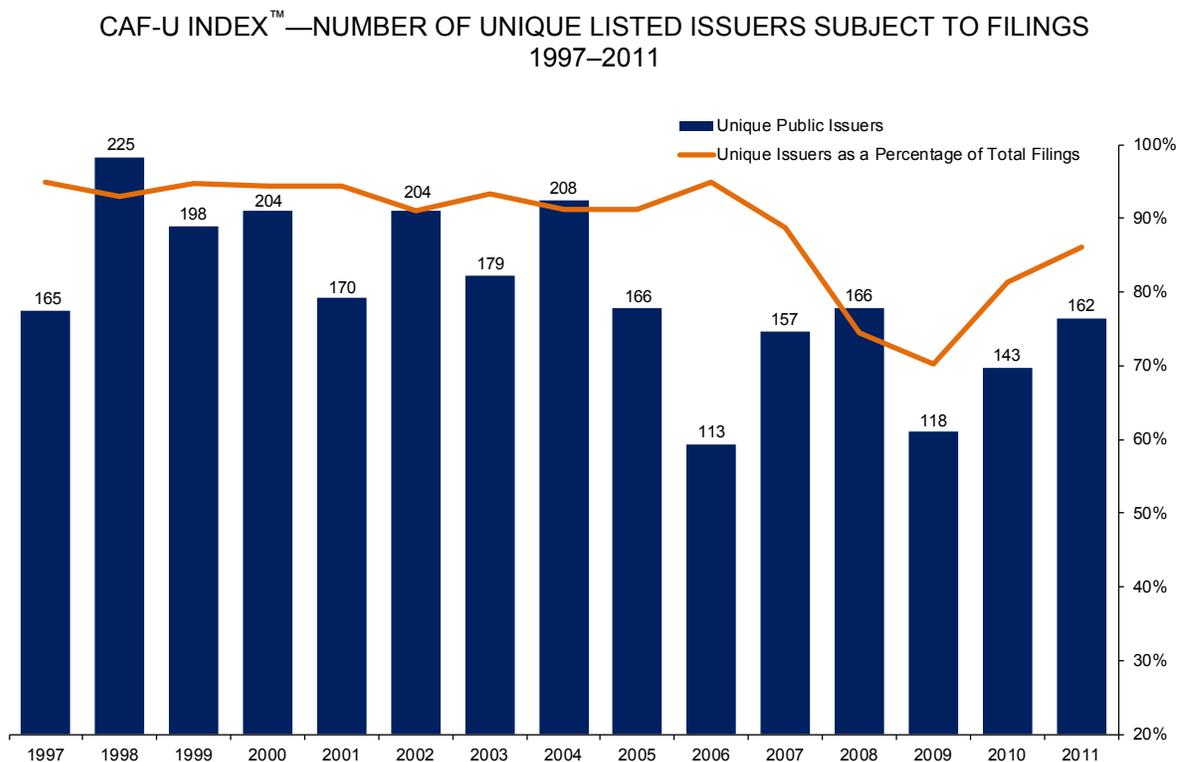


## FILINGS PER ISSUER

The Class Action Filings-Unique Issuers Index (CAF-U Index™) tracks the number of unique issuers<sup>7</sup> whose exchange-traded securities were involved in class actions.<sup>8</sup> In 2011, the CAF-U Index showed a slight increase in the number of unique issuers involved in filings, continuing the trend from 2010 (Figure 7).

While the total number of filings increased by 6.8 percent between 2010 and 2011, the total number of unique issuers increased by 13.3 percent. Multiple filings against the same issuer continued to decline in 2011. Unique issuers as a percentage of total 2011 filings increased to 86.2 percent from 81.3 percent in 2010, continuing to rebound from a historic low in 2009. From 1997 to 2010, the average ratio of unique issuers to total filings was 89.1 percent.

**Figure 7**



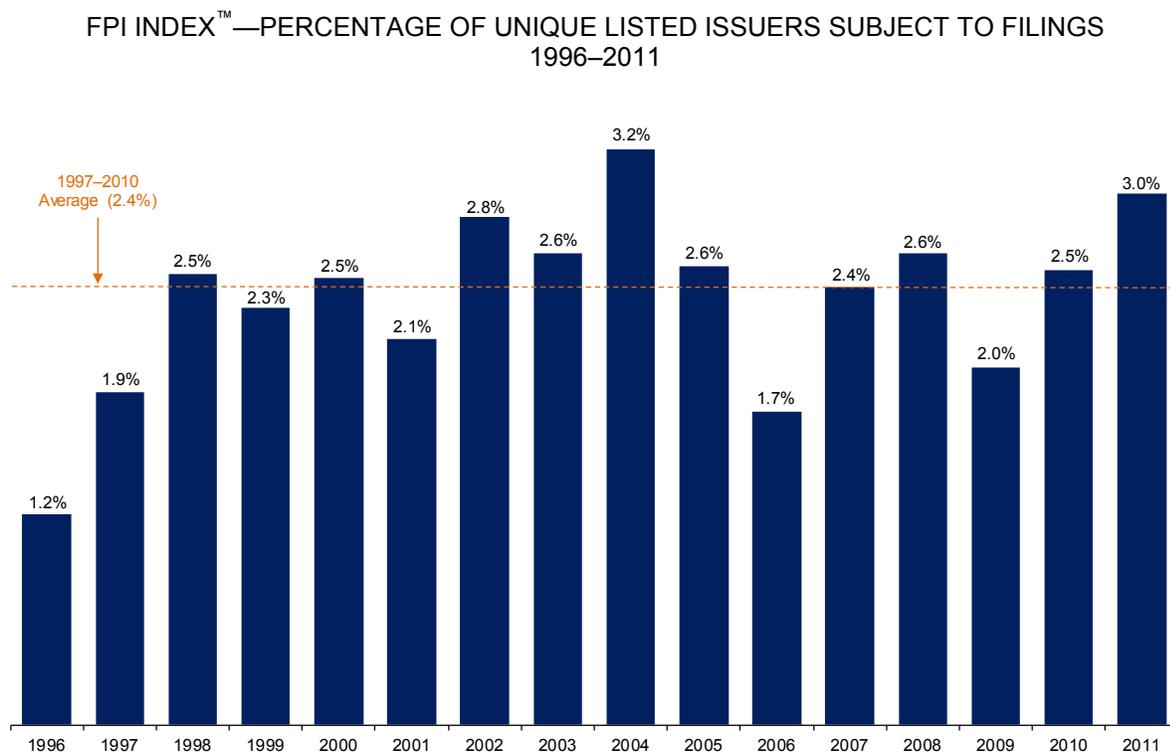
<sup>7</sup> When the number of issuers involved in litigation is presented in Figures 7 and 8, all filings against the same issuer have been consolidated so that the count is a count of unique issuers.

<sup>8</sup> The index considers securities that were traded on NYSE, NASDAQ, or Amex when the alleged fraud occurred.

### FILINGS PER ISSUER *continued*

The Filings per Issuer (FPI) Index™ shows that the number of unique issuers involved in class actions as a percentage of total issuers on NYSE, NASDAQ, or Amex increased (Figure 8). Of the companies listed on those exchanges, 3.0 percent were defendants in class actions filed in 2011 compared with 2.5 percent in 2010. The figure for 2011 is 25 percent over the 2.4 percent historical average for the 14 years ending December 2010. Figure 8 shows no perceptible trends in the incidence of unique filings per issuer during the last decade.

**Figure 8**

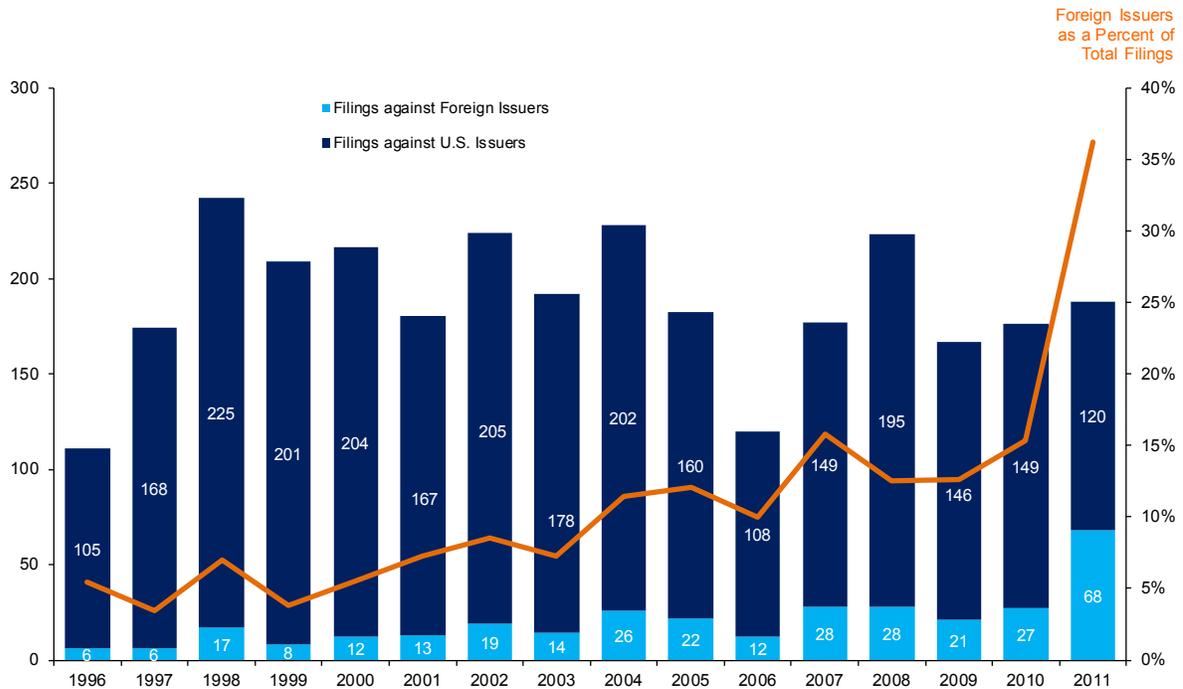


## FOREIGN FILINGS

The Class Action Filings-Foreign Index (CAF-F Index™) tracks the number of filings against foreign issuers, i.e., corporations headquartered outside of the United States, relative to total filings (Figure 9). Filings against foreign issuers as a percent of total filings sharply increased in 2011. From 2008 to 2010, the average percent of total filings against foreign issuers was 13.4 percent; however, filings against foreign issuers rose to 36.2 percent in 2011. This large increase can be attributed primarily to the number of filings against Chinese firms. Filings against Chinese companies that either underwent a reverse merger or listed American Depositary Receipts in U.S. exchanges accounted for 41 of the 68 filings against foreign issuers. There were 31 filings against foreign issuers in the second half of 2011, a decrease from 37 filings in the first six months of the year. This decrease can be partially attributed to the decrease in Chinese reverse merger filings in the second half of the year.

**Figure 9**

CAF-F INDEX™ —ANNUAL NUMBER OF CLASS ACTION FILINGS  
BY LOCATION OF HEADQUARTERS  
1996–2011



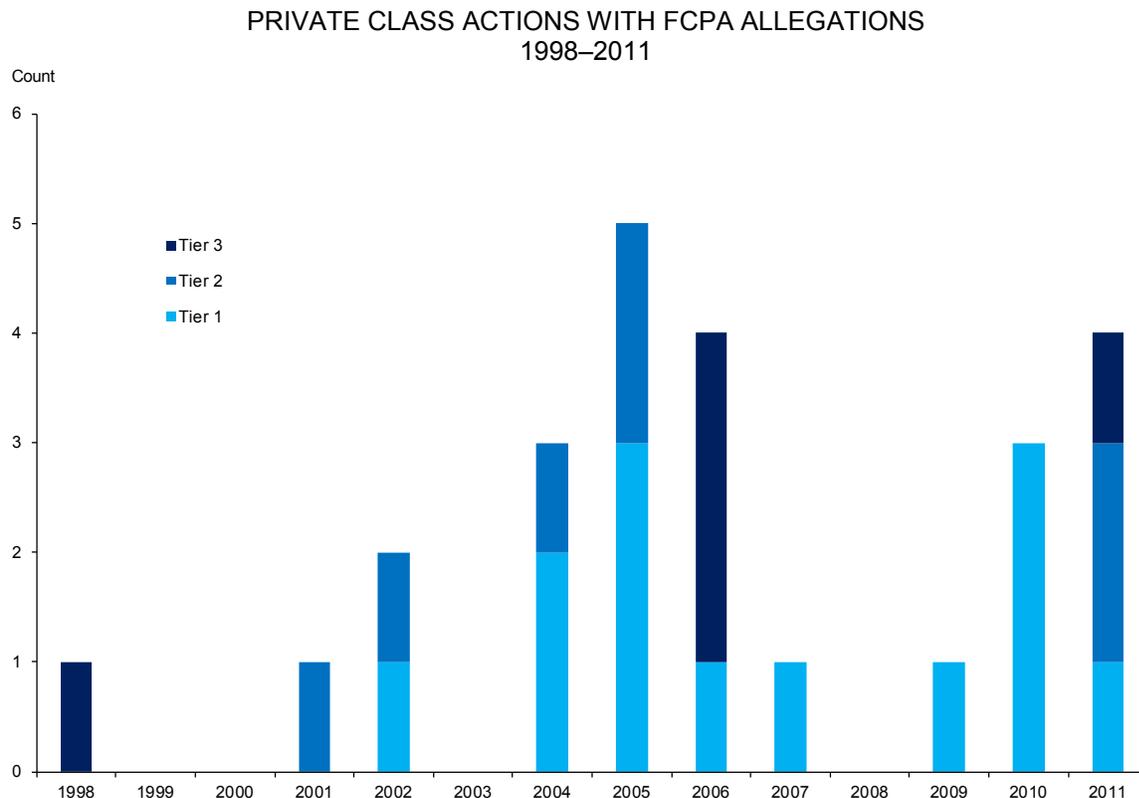
## FILINGS RELATED TO THE FOREIGN CORRUPT PRACTICES ACT

The FCPA was passed in 1977 and holds any company with securities issued in the United States liable for penalties if that company engages in bribery of foreign officials or violates certain accounting requirements. Figure 10 shows the frequency of private securities class actions with FCPA allegations from 1998 to 2011. These are cases in which a private securities class action was filed that referenced a settled or pending FCPA investigation by the SEC or DOJ.

The cases are divided into three “tiers” based on how central the FCPA allegations are to the complaint. Tier 1 cases are those in which alleged FCPA violations were central to the plaintiffs’ claims. These filings usually made a direct reference to an alleged bribery or accounting fraud early in the complaint, which served as the basis for the allegations. Tier 2 cases alleged FCPA violations that were relevant to the claims but were not central to the case due to the other allegations. For example, a complaint may have referred to acts of bribery but not an accompanying FCPA investigation or claimed that FCPA accounting rules were violated along with GAAP and SEC standards. Tier 3 cases made only a passing reference to FCPA. These cases may have included references to FCPA allegations related to acts separate from those in the complaint or mentioned the FCPA in a quote from a news source.

In total, there have been 13 Tier 1 filings, seven Tier 2 filings, and five Tier 3 filings since 1998.

**Figure 10**



## HEAT MAPS

The Heat Maps of S&P 500 Securities Litigation™ analyze securities class action activity by sector. The analysis focuses on companies in the S&P 500 Index, which represents 500 large, publicly traded companies in all major sectors. Starting with the composition of the S&P 500 Index at the beginning of each year, the Heat Maps examine two factors for each sector. First, what percentage of these companies was subject to new securities class actions in federal court during the year? Second, of the total market capitalization of the companies in the S&P 500 Index, what percentage was accounted for by companies named in new securities class actions?

Overall, about one out of every 31 companies in the S&P 500 Index at the beginning of 2011 was a defendant in a class action filed during the year compared with an average of about one out of every 16 companies between 2000 and 2010 (Figure 11).<sup>9</sup>

**Figure 11**

### HEAT MAPS OF S&P 500 SECURITIES LITIGATION™ PERCENTAGE OF COMPANIES SUBJECT TO NEW FILINGS 2000–2011

	Average 00–10	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Consumer Discretionary	5.3%	3.3%	2.4%	10.2%	4.6%	3.4%	10.3%	4.4%	5.7%	4.5%	3.8%	5.1%	3.8%
Consumer Staples	3.9%	7.3%	8.3%	2.9%	2.9%	2.7%	8.6%	2.8%	0.0%	2.6%	4.9%	0.0%	2.4%
Energy	2.1%	0.0%	0.0%	8.0%	0.0%	4.2%	0.0%	0.0%	0.0%	0.0%	2.6%	7.7%	0.0%
Financials	11.7%	4.2%	1.4%	16.7%	8.6%	19.3%	7.3%	2.4%	10.3%	31.2%	13.1%	10.3%	1.2%
Health Care	10.1%	2.6%	7.1%	15.2%	10.4%	10.6%	10.7%	6.9%	12.7%	13.7%	3.7%	15.4%	2.0%
Industrials	3.4%	2.8%	0.0%	6.0%	3.0%	8.5%	1.8%	0.0%	5.8%	3.6%	6.9%	0.0%	1.7%
Information Technology	6.6%	9.7%	18.2%	10.3%	5.2%	3.6%	7.5%	9.0%	2.6%	2.9%	0.0%	3.9%	6.6%
Materials	1.3%	4.1%	0.0%	0.0%	2.9%	0.0%	3.1%	0.0%	0.0%	0.0%	0.0%	3.2%	0.0%
Telecommunication Services	7.7%	23.1%	16.7%	15.4%	8.3%	0.0%	0.0%	0.0%	0.0%	0.0%	11.1%	0.0%	11.1%
Utilities	6.8%	5.0%	7.9%	40.5%	2.8%	5.7%	3.0%	0.0%	3.1%	3.2%	0.0%	0.0%	8.8%
<b>All S&amp;P 500 Companies</b>	<b>6.4%</b>	<b>5.0%</b>	<b>5.6%</b>	<b>12.0%</b>	<b>5.2%</b>	<b>7.2%</b>	<b>6.6%</b>	<b>3.6%</b>	<b>5.4%</b>	<b>9.2%</b>	<b>4.8%</b>	<b>5.4%</b>	<b>3.2%</b>

Legend 0% 0%–5% 5%–15% 15%–25% 25%+

1. The chart is based on the composition of the S&P 500 as of the last trading day of the previous year.

2. Sectors are based on the Global Industry Classification Standard.

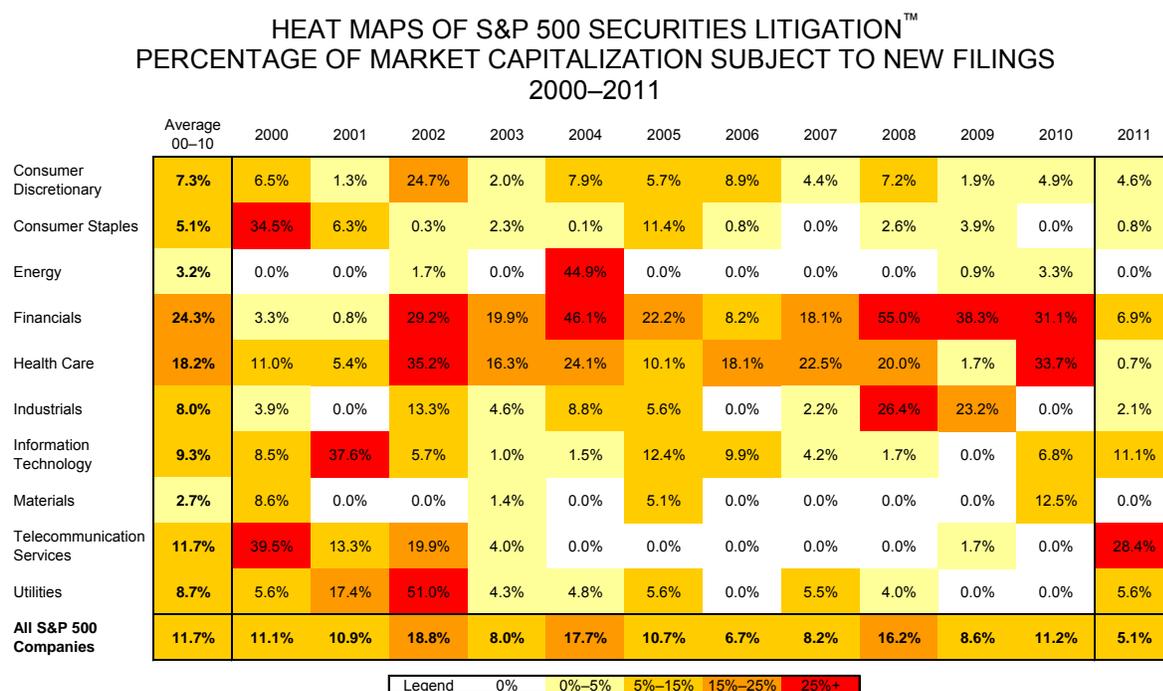
3. Percentage of Companies Subject to New Filings equals the number of companies subject to new securities class action filings in federal courts in each sector divided by the total number of companies in that sector.

<sup>9</sup> In Figures 11 and 12, filings against the same company were consolidated so that the number and market capitalization of companies involved in new securities litigation reflect unique companies.

**HEAT MAPS *continued***

In 2011, only 3.2 percent of the S&P 500 companies were sued, making it the least litigious year for S&P 500 companies since 2000. Analysis based on the market capitalization of the companies showed a similar pattern in 2011. Historically, larger companies have been more likely to be targets of class actions. This trend continued in 2011, with companies comprising 5.1 percent of the S&P 500 market capitalization subject to a new filing, compared to 3.2 percent based solely on the number of targeted companies. Relative to the historical patterns, 2011 was an unusually quiet year for companies in the S&P 500 Index.

There was very little activity in the Financials and Health Care sectors in 2011 compared with 2010 and with the historical average activity in these sectors. In 2011, only 1.2 and 2.0 percent of Financials and Health Care companies were subject to new filings, respectively. Historically, the Financials and Health Care sectors have been targeted most often, with 11.7 percent of Financials and 10.1 percent of Health Care companies in the S&P 500 Index subject to a new filing each year from 2000 to 2010. One large firm in the Telecommunication Services sector was sued in 2011, representing 28.4 percent of the sector's market capitalization. The Utilities sector experienced slightly more filings than average, while the Energy and Materials sectors experienced none.

**Figure 12**

1. The chart is based on the market capitalizations of the S&P 500 companies as of the last trading day of the previous year. If the market capitalization on the last trading day is not available, the average fourth-quarter market capitalization is used.

2. Sectors are based on the Global Industry Classification Standard.

3. Percentage of Market Capitalizations Subject to New Filings equals the total market capitalization of companies subject to new securities class action filings in federal courts in each sector divided by the total market capitalization of all companies in that sector.

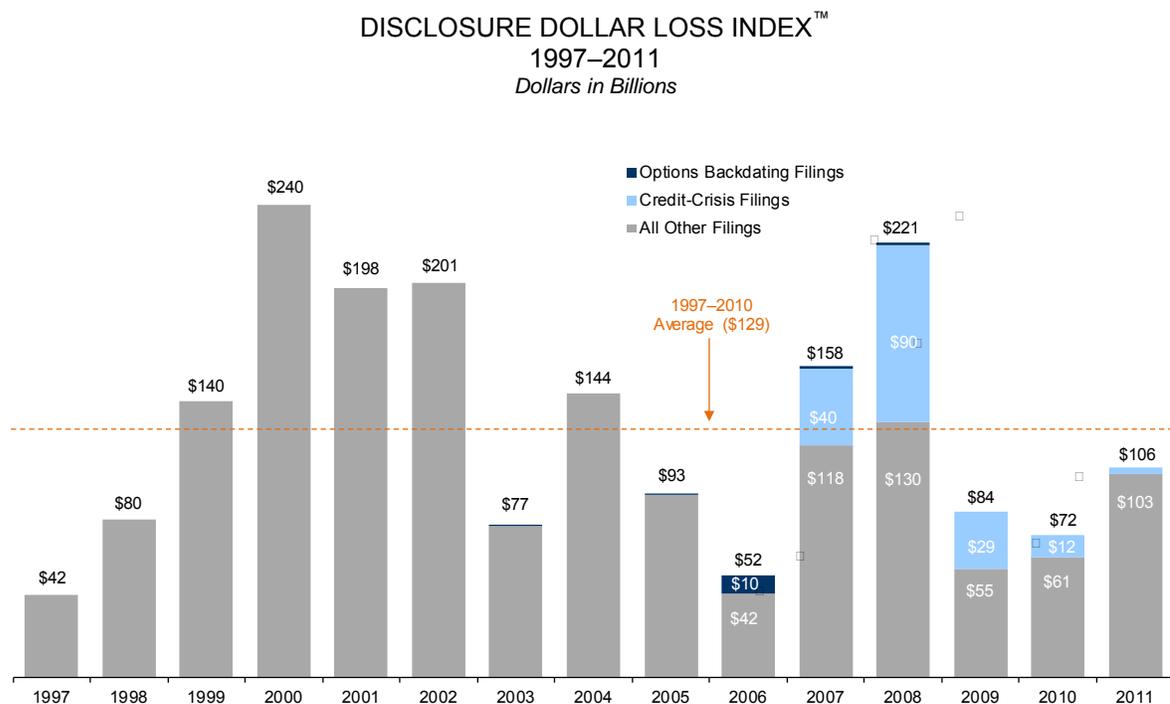
## MARKET CAPITALIZATION LOSSES

To measure changes in the size of class action filings, we track market capitalization losses for defendant firms during and at the end of class periods.<sup>10</sup> Declines in market capitalization may be driven by market, industry, and firm-specific factors. To the extent that the observed losses reflect factors unrelated to the allegations in class action complaints, indices based on class period losses would not be representative of potential defendant exposure in class actions. This is especially relevant in the post-*Dura* securities litigation environment.<sup>11</sup> This report tracks market capitalization losses at the *end* of each class period using DDL and market capitalization losses *during* each class period using MDL.

DDL is the dollar value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. MDL is the dollar value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. DDL and MDL should not be considered indicators of liability or measures of potential damages. Instead, they estimate the impact of all information revealed during or at the end of the class period, including information unrelated to the litigation.

There was a 47.2 percent increase in the Disclosure Dollar Loss Index™ (DDL Index) from 2010 to 2011 despite an increase in the number of filings of only 6.8 percent. This implies that the average DDL per filing increased. However, the DDL Index is still below the historical average of \$129 billion. Credit-crisis filings accounted for very little of the total DDL loss for 2011.

**Figure 13**

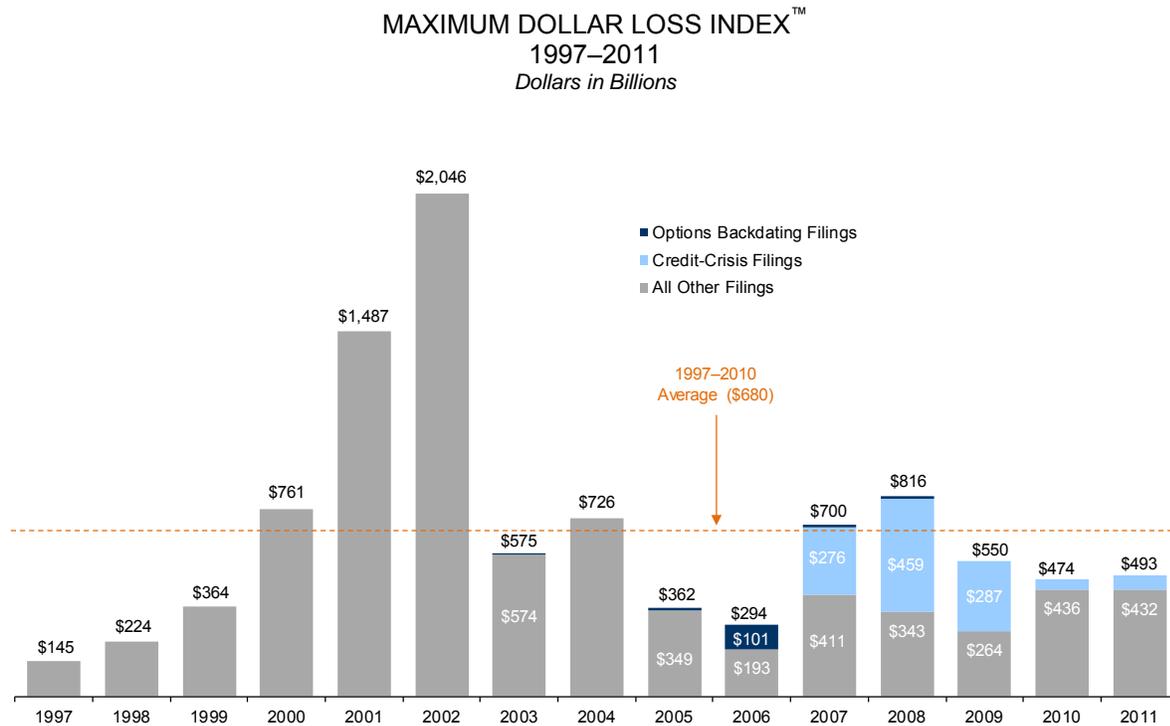


<sup>10</sup> Market capitalization measures are calculated for publicly traded common equity securities, closed-ended mutual funds, and exchange-traded funds where data are available.

<sup>11</sup> In April 2005, the Supreme Court ruled that plaintiffs in a securities class action are required to plead a causal connection between alleged wrongdoing and subsequent shareholder losses.

**MARKET CAPITALIZATION LOSSES** *continued*

The Maximum Dollar Loss Index™ (MDL Index) for 2011 was also below the historical average of \$680 billion. While the number of filings increased by 6.8 percent, the MDL increased by only 4 percent from 2010 to 2011. This can be partially attributed to the number of Chinese reverse merger filings in the first half of 2011, which generally targeted smaller companies.

**Figure 14**

**MARKET CAPITALIZATION LOSSES** *continued*

Figure 15 provides summary statistics for 2011 filings compared with 2010 filings and the annual average between 1997 and 2010. The 2011 average DDL of \$864 million was higher than the average for 2010 as well as the average for the 14 years ending December 2010. However, the 2011 median DDL was below the 2010 median and the 14-year average median DDL. Filings in 2011 had a lower average MDL and median MDL than both 2010 filings and filings over the previous 14 years. The 2011 median MDL of \$0.4 billion is 33.3 percent lower than the 2010 median MDL of \$0.6 billion.

**Figure 15****FILINGS COMPARISON**

	Average (1997–2010)	2010	2011
Class Action Filings	194	176	188
Disclosure Dollar Loss			
Total (\$ Millions)	\$128,735	\$72,181	\$106,254
Average (\$ Millions)	\$799	\$687	\$864
Median (\$ Millions)	\$120	\$146	\$83
Median DDL % Decline	23.1%	20.6%	18.9%
Maximum Dollar Loss			
Total (\$ Billions)	\$680.3	\$474.1	\$493.5
Average (\$ Billions)	\$4.2	\$4.5	\$4.0
Median (\$ Billions)	\$0.7	\$0.6	\$0.4

Average and median numbers are calculated only for filings with MDL and DDL data.

## MEGA FILINGS

An analysis of mega filings, as measured by MDL and DDL, shows that a few mega filings account for a majority of the total market capitalization losses associated with class actions.

### Disclosure Dollar Loss

In 2011, there were four mega DDL filings—filings with a DDL of \$5 billion or more. These four filings accounted for \$63 billion, or 58.9 percent, of the DDL Index in 2011. None of these cases were related to the credit crisis. In 2010, four mega DDL filings represented 49.6 percent of the DDL Index. One of these cases was related to the credit crisis. Mega DDL filings between 1997 and 2010 represented 56.4 percent of the total DDL Index in that period.

### Maximum Dollar Loss

As in prior years, mega filings represented a large portion of the MDL Index in 2011. There were nine mega MDL filings—filings with an MDL of \$10 billion or more. These nine filings accounted for \$396 billion, or 80.2 percent, of the MDL Index. One of the nine mega MDL filings was related to the credit crisis, and six exceeded \$25 billion in MDL. In 2010, there were 14 mega MDL filings, which accounted for 79.1 percent of the MDL Index in that year. Two of the mega MDL filings in 2010 were related to the credit crisis, and five mega filings exceeded \$25 billion in MDL. Mega MDL filings between 1997 and 2010 represented 73.8 percent of the total MDL Index in that period.

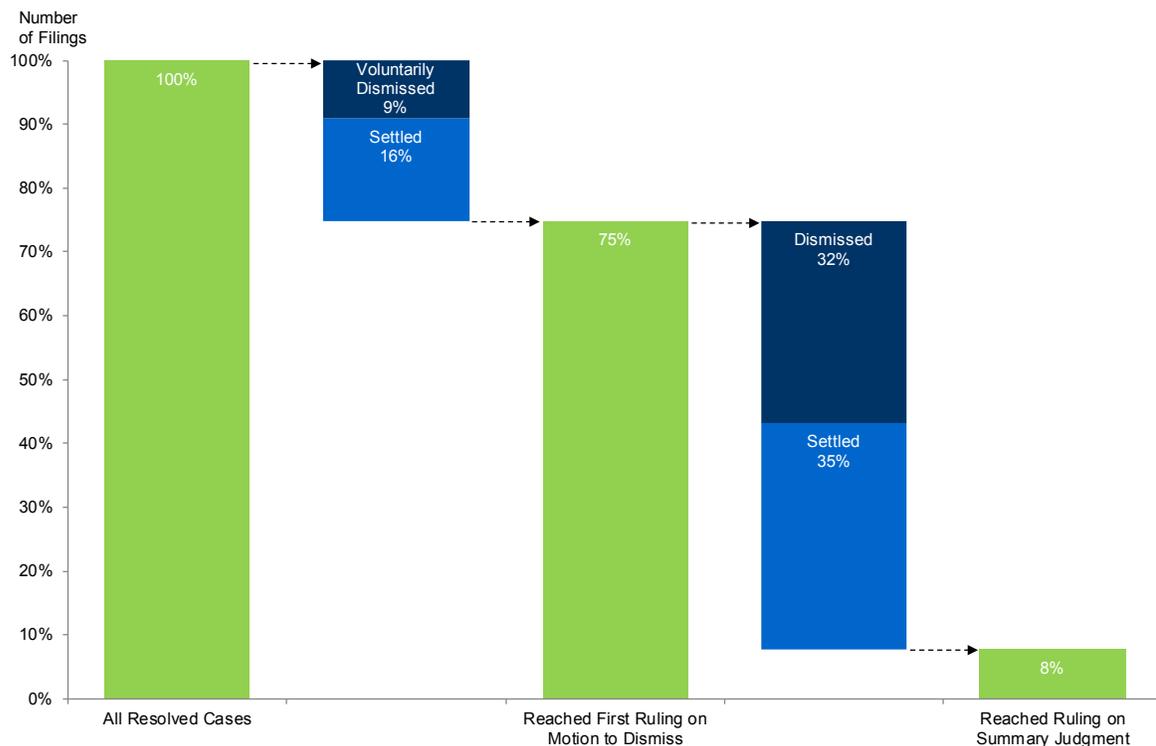
## PROBABILITY OF ADVANCING THROUGH STAGES OF LITIGATION

New for the *2011 Year in Review* is an analysis of the probability of a class action advancing through different stages of litigation. This analysis uses the sample of Classic Filings from 1996 to 2011 that have been resolved and for which we have sufficient data.<sup>12</sup> The outcomes of these cases were tracked to identify those that reached a ruling on motion to dismiss and those that subsequently reached a ruling on summary judgment. Cases that did not reach these milestones either were voluntarily dismissed, dismissed as a consequence of a ruling, or settled. See Appendices 1 and 2 for details.

Figure 16 shows that, for cases from all circuits, 75 percent of the 2,415 Classic Filings reached a first ruling on motion to dismiss. Before the first ruling on motion to dismiss, 9 percent were voluntarily dismissed and 16 percent were settled. After the first ruling on motion to dismiss, 32 percent of all cases were dismissed at that point or subsequently, 35 percent settled thereafter but before a ruling on summary judgment, and 8 percent proceeded to a ruling on summary judgment. All cases that advanced beyond a ruling on summary judgment are included in this category.

**Figure 16**

### PORTION OF RESOLVED CASES ADVANCING TO DIFFERENT LITIGATION STAGES ALL CIRCUITS: 1996–2011



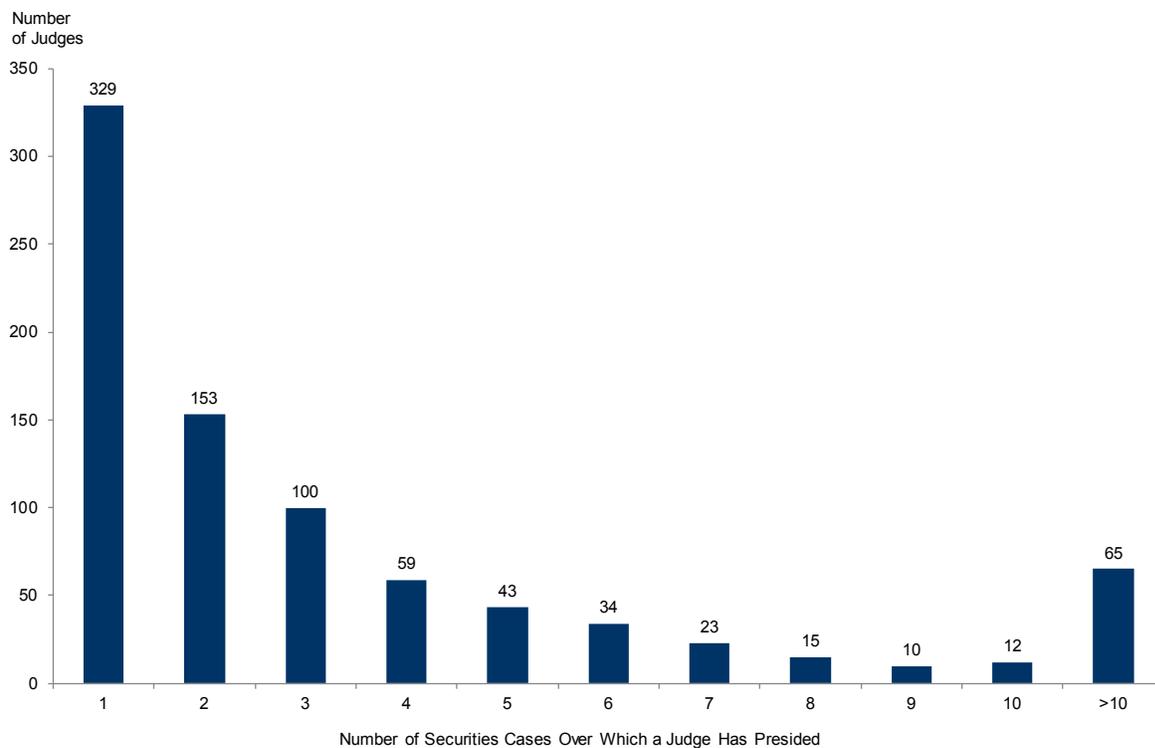
<sup>12</sup> Data regarding the last stage of litigation are available for 94.3 percent of Classic Filings.

## CASE EXPERIENCE OF JUDGES

New for the *2011 Year in Review* is an analysis on the case experience of judges in securities class actions. Figure 17 illustrates the number of judges who presided over a specified number of class actions. Between 1996 and 2011, 329 judges presided over only one case. Only 65 judges presided over more than 10 class actions. This analysis examines only federal judges who had at least one case assigned to them.

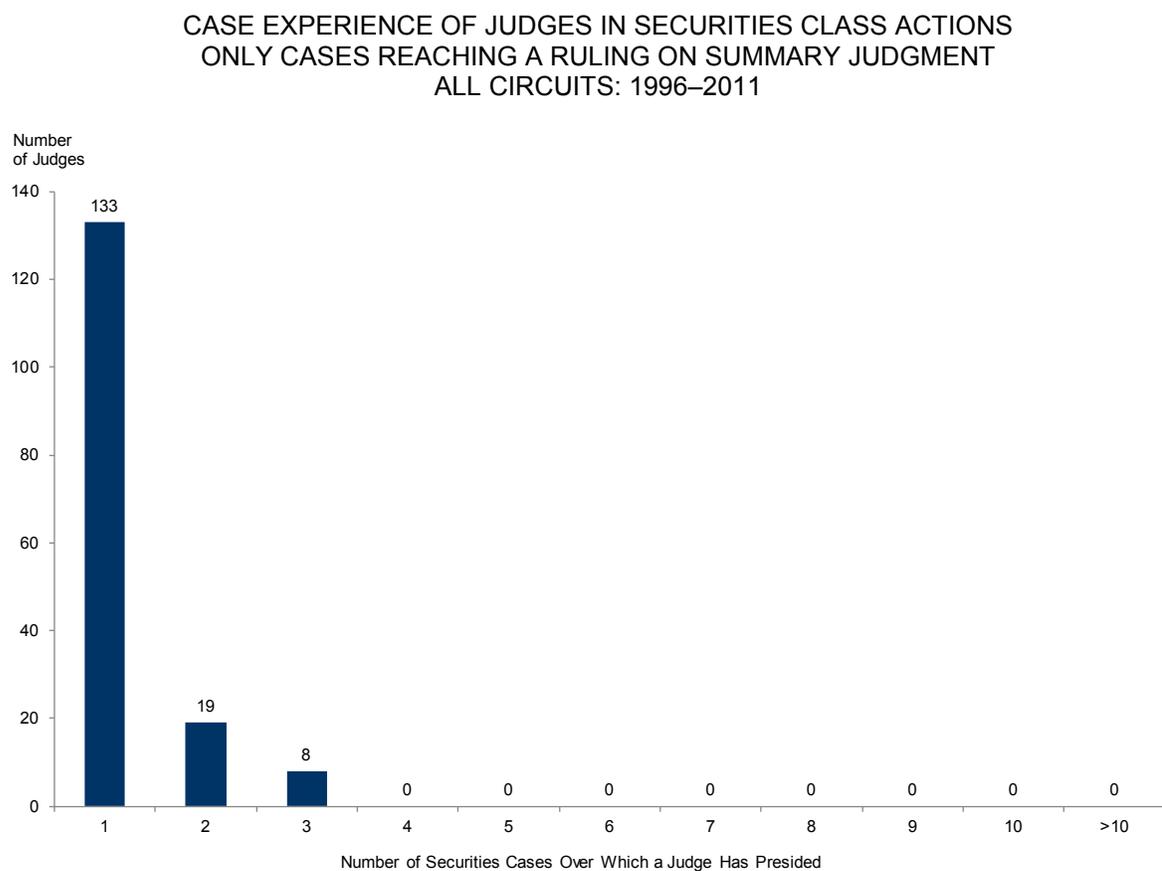
**Figure 17**

### CASE EXPERIENCE OF JUDGES IN SECURITIES CLASS ACTIONS ALL CIRCUITS: 1996–2011



**CASE EXPERIENCE OF JUDGES** *continued*

Even fewer judges during this period presided over multiple cases that reached a ruling on summary judgment. For judges who presided over cases that reached this stage, 133 presided over only one case. No judge presided over more than three federal class actions that reached a ruling on summary judgment during this period (Figure 18).

**Figure 18**

## PLAINTIFF LAW FIRMS

Also new for the *2011 Year in Review* is an analysis of which plaintiff law firms have most frequently been named lead counsel. Figure 19 ranks the plaintiff law firms by the number of instances the firm was named as lead counsel in cases filed in recent years, excluding M&A filings.<sup>13</sup> If multiple firms were named co-lead counsels, then all are counted in this analysis. Robbins Geller Rudman & Dowd was named lead or co-lead counsel more often than any other firm in each year.

**Figure 19**

**PLAINTIFF LAW FIRMS NAMED AS LEAD COUNSEL  
IN MORE THAN FIVE PERCENT OF FILINGS  
EXCLUDING M&A FILINGS  
2009–2010**

2009			2010		
Law Firm	Count	Percent Named Lead Counsel	Law Firm	Count	Percent Named Lead Counsel
Robbins Geller Rudman & Dowd	76	52%	Robbins Geller Rudman & Dowd	41	33%
Glancy Binkow & Goldberg	11	8%	The Rosen Law Firm	12	10%
Scott & Scott	8	5%	Kahn Swick & Foti	10	8%
Bernstein Litowitz Berger & Grossmann	8	5%	Labaton Sucharow	10	8%
Labaton Sucharow	8	5%	Glancy Binkow & Goldberg	9	7%
Cohen Milstein Sellers & Toll	7	5%	Bernstein Litowitz Berger & Grossmann	9	7%
Kessler Topaz Meltzer & Check	7	5%	Shepherd, Finkelman, Miller & Shah	7	6%
			Scott & Scott	7	6%
			Pomerantz Haudek Grossman & Gross	7	6%

The percentages are not additive across named lead plaintiff law firms because multiple firms can be named as co-lead counsel.

<sup>13</sup> Data for 2011 are not presented because 69.1 percent of filings do not yet have named lead plaintiff law firms.

**PLAINTIFF LAW FIRMS *continued***

Figure 20 presents data on which plaintiff law firms were named as lead counsel in M&A filings. Due to the small number of such class actions in 2009, the data for 2009 and 2010 were consolidated. Levi & Korsinsky was named as lead plaintiff in 29 percent of M&A filings, and Bull & Lifshitz and Robbins Geller Rudman & Dowd were both named in 17 percent of M&A filings.

**Figure 20**

**PLAINTIFF LAW FIRMS NAMED AS LEAD COUNSEL  
IN MORE THAN FIVE PERCENT OF M&A FILINGS  
2009–2010**

Law Firm	Count	Percent Named Lead Counsel
Levi & Korsinsky	10	29%
Bull & Lifshitz	6	17%
Robbins Geller Rudman & Dowd	6	17%
Faruqi & Faruqi	4	11%
Stull, Stull & Brody	3	9%
Robbins Umeda	3	9%
Scott & Scott	3	9%
Chitwood Harley Harnes	2	6%
Bramson, Plutzik, Mahler & Birkhaeuser	2	6%
Harwood Feffer	2	6%
The Warner Law Firm	2	6%

The percentages are not additive across named lead plaintiff law firms because multiple firms can be named as co-lead counsel.

**PLAINTIFF LAW FIRMS *continued***

Figures 21 and 22 show the five plaintiff law firms that were named lead counsel for cases filed in 2009 to 2010 ranked by the total MDL and DDL experienced by the defendant firms, respectively. Robbins Geller Rudman & Dowd was lead counsel in cases with the largest collective market capitalization losses in 2009 and 2010. M&A filings are not included in this analysis because stock price declines are rarely at issue in these filings.

**Figure 21**

**TOP FIVE PLAINTIFF LAW FIRMS  
BY MAXIMUM DOLLAR LOSS  
2009–2010**

<b>2009</b>		<b>2010</b>	
<b>Law Firm</b>	<b>Percent of Total MDL</b>	<b>Law Firm</b>	<b>Percent of Total MDL</b>
Robbins Geller Rudman & Dowd	25%	Robbins Geller Rudman & Dowd	43%
Kessler Topaz Meltzer & Check	14%	Scott & Scott	9%
Bernstein Litowitz Berger & Grossmann	13%	Labaton Sucharow	9%
Berman DeValerio	13%	Bernstein Litowitz Berger & Grossmann	7%
Susman Godfrey	10%	Kaplan Fox	7%

The percentages are not additive across named lead plaintiff law firms because multiple firms can be named as co-lead counsel.

**Figure 22**

**TOP FIVE PLAINTIFF LAW FIRMS  
BY DISCLOSURE DOLLAR LOSS  
2009–2010**

<b>2009</b>		<b>2010</b>	
<b>Law Firm</b>	<b>Percent of Total DDL</b>	<b>Law Firm</b>	<b>Percent of Total DDL</b>
Robbins Geller Rudman & Dowd	26%	Robbins Geller Rudman & Dowd	40%
Berman DeValerio	21%	Scott & Scott	22%
Bernstein Litowitz Berger & Grossmann	13%	Labaton Sucharow	11%
Kessler Topaz Meltzer & Check	10%	Kessler Topaz Meltzer & Check	6%
Susman Godfrey	10%	Grant & Eisenhofer	5%

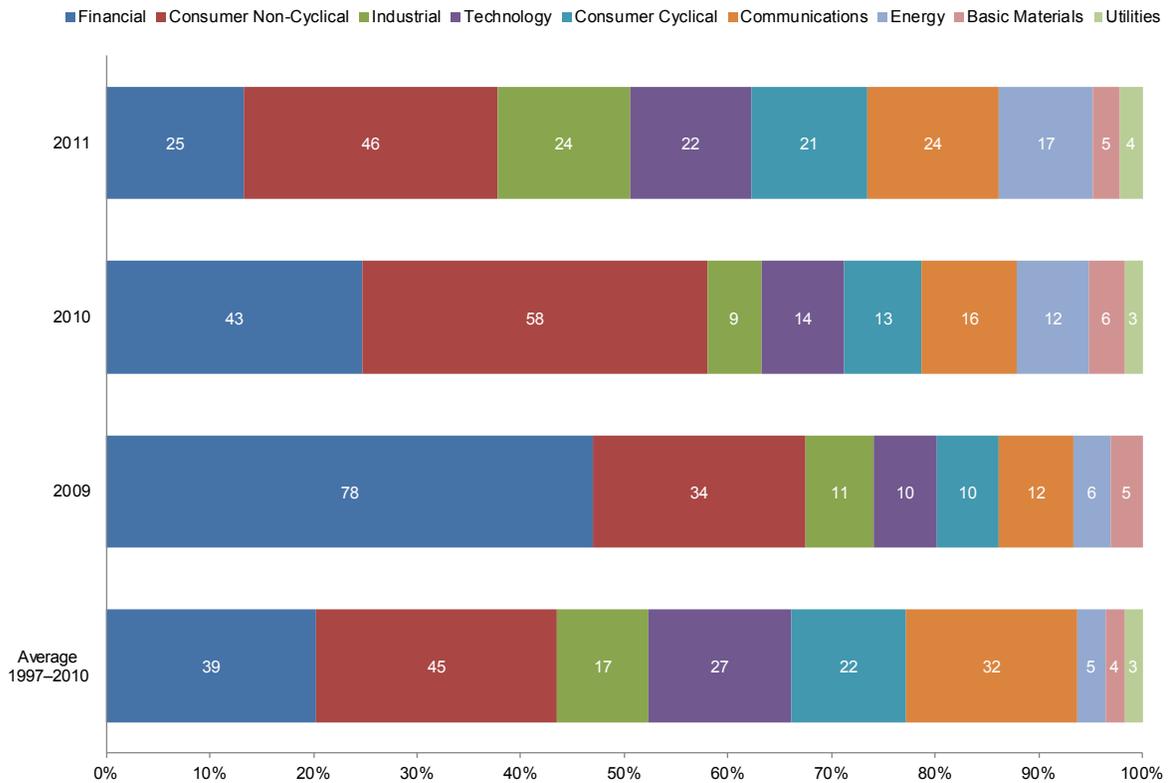
The percentages are not additive across named lead plaintiff law firms because multiple firms can be named as co-lead counsel.

**INDUSTRY**

Figure 23 provides summary statistics on class actions by industry (as defined by the *Bloomberg Industry Classification System*). In 2011, filings in the Financial sector decreased to just 25 filings, 41.9 percent below the number of Financial sector filings in 2010. However, the Financial sector did have the highest MDL and DDL in 2011, despite the relatively low number of filings. In 2011, 24.5 percent of all filings were concentrated in the Consumer Non-Cyclical sector, making it the most targeted sector. Of the filings in the Consumer Non-Cyclical sector, 58.7 percent were related to the healthcare industry, showing that while few companies in the S&P 500 Health Care sector were sued (see Figure 11), smaller firms in the healthcare industry remained a large target for class actions in 2011. Please see Appendix 3 for details.

**Figure 23**

**FILINGS BY INDUSTRY**



Analysis excludes one filing in the Computer Services sector in 2006, one filing in an unknown sector in 2009, and two filings in the Government and Service sectors in 2010.

## EXCHANGE

Issuers listed on NASDAQ had more filings in 2011 than issuers listed on NYSE or Amex, in line with average filings from 1997 to 2010 (Figure 24). In 2011, 60 class actions were filed against firms listed on NYSE or Amex and 105 against firms listed on NASDAQ. However, the market capitalization losses in filings related to issuers listed on NYSE or Amex continued to be larger than filings related to issuers listed on NASDAQ. While NASDAQ filings accounted for 63.6 percent of the total number of filings against issuers listed on major exchanges, these filings only represented 41.4 percent of the total DDL and 24.9 percent of the total MDL in 2011.

**Figure 24**

### FILINGS BY EXCHANGE LISTING

	Average (1997–2010)		2010		2011	
	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ
Class Action Filings	79	98	75	73	60	105
Disclosure Dollar Loss						
Total (\$ Millions)	\$95,213	\$33,090	\$62,359	\$9,640	\$62,256	\$43,834
Average (\$ Millions)	\$1,411	\$353	\$1,386	\$189	\$1,482	\$600
Median (\$ Millions)	\$267	\$84	\$381	\$104	\$95	\$87
Maximum Dollar Loss						
Total (\$ Billions)	\$454	\$224	\$422	\$50	\$369	\$123
Average (\$ Billions)	\$6.6	\$2.4	\$9.4	\$1.0	\$8.8	\$1.7
Median (\$ Billions)	\$1.3	\$0.4	\$1.7	\$0.4	\$0.9	\$0.4

Average and median numbers are calculated only for filings with MDL and DDL data.

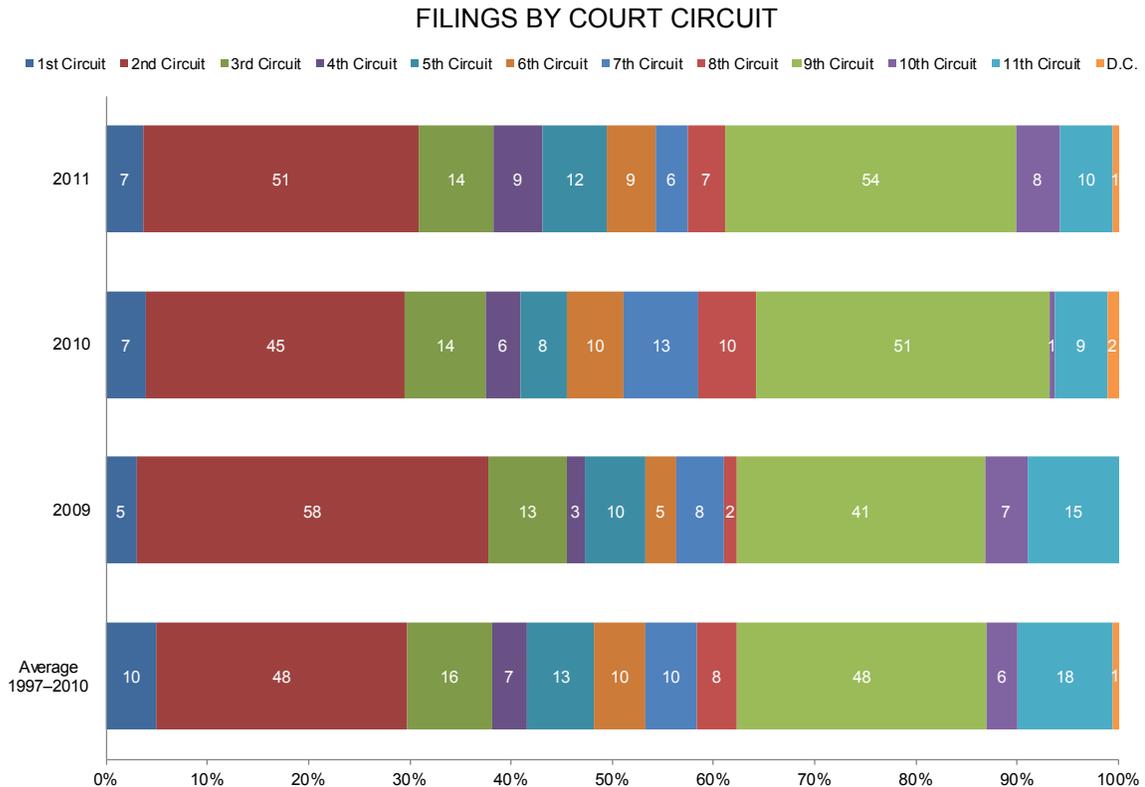
**CIRCUIT**

As in 2010, the three circuits with the highest number of filings in 2011 were the Ninth Circuit, Second Circuit, and Third Circuit, with 54, 51, and 14 filings, respectively (Figure 25). The Second Circuit and Ninth Circuit have been the most active circuits in each year since 1996. The Ninth Circuit surpassed the Second Circuit in 2010 for most filings and maintained that position in 2011, at least partially due to the decline in credit-crisis filings, which tend to be concentrated in the Second Circuit.

The circuits with the highest total DDL in 2011 were the Ninth Circuit with \$50 billion, the Second Circuit with \$45 billion, and the Eighth Circuit with \$3 billion. The Ninth Circuit had two of the four mega DDL filings, giving it an unusually large total DDL relative to the historical average of \$19 billion observed between 1997 and 2010. The other two mega DDL filings were in the Second Circuit. Historically, the Second Circuit, Third Circuit, and Ninth Circuit have had the highest total DDL.

The three circuits with the highest total MDL in 2011 were the Second Circuit, Ninth Circuit, and Sixth Circuit, with \$290, \$162, and \$13 billion, respectively. Four of the nine mega MDL filings were filed in the Ninth Circuit, and the other five were filed in the Second Circuit. Historically, the Second Circuit, Third Circuit, and Ninth Circuit have had the highest total MDL levels. Please see Appendix 4 for details.

**Figure 25**



## CLASSIFICATION OF COMPLAINTS

The Securities Class Action Clearinghouse tracks allegations contained in class action complaints.<sup>14</sup> A comparison of class actions filed in 2011 with those filed since 2007 reveals the following findings (Figure 26).

- The percentage of filings with Rule 10b-5 claims increased to 71 percent in 2011 from 66 percent in 2010. In each year from 2007 to 2010, the percentage of filings with Rule 10b-5 claims decreased relative to the previous year. The increase in 2011 may be driven by the number of Chinese reverse merger filings, of which 97.5 percent contained Rule 10b-5 claims. However, in 2011, 23 percent of filings, mostly M&A filings, did not have Rule 10b-5, Section 11, or Section 12(2) claims.
- The percentage of filings with Section 11 and Section 12(2) claims continued to decline in 2011. Class actions with Section 11 and Section 12(2) claims accounted for only 11 percent and 9 percent of filings, respectively.
- Underwriter defendants were named in 11 percent of initial complaints in 2011, up slightly from 10 percent in 2010 but below 17 percent in 2009.
- The incidence of initial complaints naming an auditor decreased slightly to 3 percent in 2011 from 4 percent in 2010.
- The percentage of filings with allegations regarding false forward-looking statements increased to 56 percent, the highest level in the past three years.
- Only 12 percent of 2011 filings contained allegations of insider trading. This is consistent with the incidence of such allegations in 2009 and 2010, but distinctly less than the incidence in 2007 and 2008.
- In 2011, the percentage of filings alleging violations of GAAP increased to 37 percent from 26 percent in 2010, the lowest level in the past five years. Part of the increase was driven by Chinese reverse merger filings.
- Over 70 percent of filings that alleged GAAP violations did not refer to an announcement by the company that it will or may restate its financial statements or that its financial statements were unreliable.
- In 2011, 24 percent of total filings alleged Internal Control Weaknesses.<sup>15</sup> However, 53 percent of filings that alleged GAAP violations claimed Internal Control Weaknesses, below the 2010 level but higher than that observed between 2007 and 2009.
- The percentage of filings that alleged Internal Control Weaknesses and referred to an announcement by the company of such weaknesses has remained low.

<sup>14</sup> The classifications are based on the first identified complaint. Additional allegations and defendants may be added in subsequent complaints and are not captured in these analyses.

<sup>15</sup> The SEC required accelerated filers and their auditors to report on internal controls (SOX 404 Reports) beginning with fiscal years ending on or after November 15, 2004.

**CLASSIFICATION OF COMPLAINTS** *continued***Figure 26****2011 ALLEGATIONS BOX SCORE**

General Characteristics	Percentage of Total Filings				
	2007	2008	2009	2010	2011
10b-5 claims	80%	75%	69%	66%	71%
Section 11 claims	19	24	23	15	11
Section 12(2) claims	11	18	25	10	9
No 10b-5, Section 11, or Section 12(2) claims	5	3	1	23	23
Underwriter defendant	11	17	17	10	11
Auditor defendant	1	3	7	4	3
<b>Allegations</b>					
Misrepresentations in financial documents	92%	93%	89%	93%	94%
False forward-looking statements	62	68	51	45	56
Insider trading	27	23	14	16	12
GAAP Violations <sup>1</sup>	44	42	37	26	37
Announced Restatement <sup>2</sup>	16	10	10	7	11
Internal Control Weaknesses <sup>3</sup>	16	13	14	17	20
Announced Internal Control Weaknesses <sup>4</sup>	7	4	4	3	6

1. First identified complaint includes allegations of GAAP Violations. In some cases, plaintiff(s) may not have expressly referenced GAAP; however, the allegations, if true, would represent GAAP Violations.

2. First identified complaint includes allegations of GAAP Violations and refers to an announcement during or subsequent to the class period that the company will restate, may restate, or has unreliable financial statements.

3. First identified complaint includes allegations of GAAP Violations and Internal Control Weaknesses over Financial Reporting.

4. First identified complaint includes allegations of Internal Control Weaknesses and refers to an announcement during or subsequent to the class period that the company has Internal Control Weaknesses over Financial Reporting.

## NEW DEVELOPMENTS

### The SEC's Report on the Dodd-Frank Whistleblower Program

The SEC published its annual report on the Dodd-Frank Whistleblower Program in November 2011. This annual report was the first one published since the Final Rules, which specify the terms of the whistleblower program and establish procedures for submitting tips and applying for awards, became effective on August 12, 2011. Awards are made in the amount of 10 to 30 percent of the sanctions collected by the SEC.<sup>16</sup> Despite only seven weeks of available whistleblower data, there were 334 whistleblower tips received from August 12, 2011, through September 30, 2011.

The most common complaint categories were market manipulation, corporate disclosures and financial statements, and offering fraud. Together, these accounted for more than 47 percent of the tips received. The SEC received whistleblower tips from 37 states and 11 different foreign countries. California was the most prolific state in terms of tips received, followed by New York, Florida, and Texas. Foreign cases accounted for 9.6 percent of the tips received. China led the foreign countries in whistleblower submissions with 10 tips, followed by the United Kingdom with nine tips.<sup>17</sup>

The SEC report only has seven weeks of data and it may be too soon to draw any conclusions on trends, but it is expected that the SEC will continue to increase the number of actions it brings and the sanctions it enforces.<sup>18</sup>

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<sup>16</sup> “Annual Report on the Dodd-Frank Whistleblower Program, Fiscal Year 2011” U.S. Securities and Exchange Commission, <http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf>.

<sup>17</sup> *Ibid.*

<sup>18</sup> “SEC Reports Record Year for Fraud Enforcements, Expects More in 2012,” Law.com, [http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202532662052&SEC\\_Reports\\_Record\\_Year\\_for\\_Fraud\\_Enforcements\\_Expectations\\_More\\_in\\_2012](http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202532662052&SEC_Reports_Record_Year_for_Fraud_Enforcements_Expectations_More_in_2012).

## APPENDIX

## Appendix 1

FREQUENCY OF RESOLVED CASES ADVANCING  
TO DIFFERENT LITIGATION STAGES  
BY CIRCUIT  
1996–2011

Number of Cases							
Circuit	All Resolved Cases	Voluntarily Dismissed Prior to First Ruling on Motion to Dismiss	Settled Prior to First Ruling on Motion to Dismiss	Reached First Ruling on Motion to Dismiss	Settled After First Ruling on Motion to Dismiss <sup>1</sup>	Dismissed Prior to Ruling on Summary Judgment	Reached Ruling on Summary Judgment
1st	134	12	21	101	50	40	11
2nd	542	47	100	395	169	193	33
3rd	211	18	29	164	80	64	20
4th	88	6	13	69	25	35	9
5th	172	12	32	128	57	59	12
6th	116	6	20	90	43	38	9
7th	125	11	14	100	56	30	14
8th	101	8	12	81	31	40	10
9th	594	66	105	423	210	168	45
10th	81	6	13	62	40	16	6
11th	238	23	28	187	93	76	18
D.C.	13	2	3	8	2	5	1
<b>Total</b>	<b>2,415</b>	<b>217</b>	<b>390</b>	<b>1,808</b>	<b>856</b>	<b>764</b>	<b>188</b>

Percentage of All Resolved Cases							
Circuit	Voluntarily Dismissed Prior to First Ruling on Motion to Dismiss	Settled Prior to First Ruling on Motion to Dismiss	Reached First Ruling on Motion to Dismiss	Settled After First Ruling on Motion to Dismiss <sup>1</sup>	Dismissed Prior to Ruling on Summary Judgment	Reached Ruling on Summary Judgment	
1st	9%	16%	75%	37%	30%	8%	
2nd	9%	18%	73%	31%	36%	6%	
3rd	9%	14%	78%	38%	30%	9%	
4th	7%	15%	78%	28%	40%	10%	
5th	7%	19%	74%	33%	34%	7%	
6th	5%	17%	78%	37%	33%	8%	
7th	9%	11%	80%	45%	24%	11%	
8th	8%	12%	80%	31%	40%	10%	
9th	11%	18%	71%	35%	28%	8%	
10th	7%	16%	77%	49%	20%	7%	
11th	10%	12%	79%	39%	32%	8%	
D.C.	15%	23%	62%	15%	38%	8%	
<b>Total</b>	<b>9%</b>	<b>16%</b>	<b>75%</b>	<b>35%</b>	<b>32%</b>	<b>8%</b>	

These figures are calculated using Classic Filings from 1996 to 2011 that have been resolved. Out of the 2,562 Classic Filings that were resolved, 2,415 have specified outcomes.

1. These cases were settled after the first ruling on motion to dismiss but before the first ruling on summary judgment.

APPENDIX *continued*

## Appendix 2

FREQUENCY OF RESOLVED CASES ADVANCING  
TO DIFFERENT LITIGATION STAGES  
BY YEAR  
1996–2011

Number of Cases

Year	All Resolved Cases	Voluntarily Dismissed Prior to First Ruling on Motion to Dismiss	Settled Prior to First Ruling on Motion to Dismiss	Reached First Ruling on Motion to Dismiss	Settled After First Ruling on Motion to Dismiss <sup>1</sup>	Dismissed Prior to Ruling on Summary Judgment	Reached Ruling on Summary Judgment
1996	104	4	26	74	34	25	15
1997	160	9	34	117	66	34	17
1998	222	11	49	162	87	61	14
1999	199	8	26	165	83	65	17
2000	210	5	40	165	82	66	17
2001	169	9	27	133	79	37	17
2002	210	7	31	172	81	60	31
2003	180	15	26	139	72	60	7
2004	219	20	35	164	71	81	12
2005	168	16	19	133	62	61	10
2006	110	5	14	91	40	42	9
2007	151	12	23	116	49	58	9
2008	153	28	21	104	36	62	6
2009	78	17	8	53	11	36	6
2010	59	30	10	19	3	15	1
2011	23	21	1	1	0	1	0
<b>Total</b>	<b>2,415</b>	<b>217</b>	<b>390</b>	<b>1,808</b>	<b>856</b>	<b>764</b>	<b>188</b>

Percentage of All Resolved Cases

Year	Voluntarily Dismissed Prior to First Ruling on Motion to Dismiss	Settled Prior to First Ruling on Motion to Dismiss	Reached First Ruling on Motion to Dismiss	Settled After First Ruling on Motion to Dismiss <sup>1</sup>	Dismissed Prior to Ruling on Summary Judgment	Reached Ruling on Summary Judgment
1996	4%	25%	71%	33%	24%	14%
1997	6%	21%	73%	41%	21%	11%
1998	5%	22%	73%	39%	27%	6%
1999	4%	13%	83%	42%	33%	9%
2000	2%	19%	79%	39%	31%	8%
2001	5%	16%	79%	47%	22%	10%
2002	3%	15%	82%	39%	29%	15%
2003	8%	14%	77%	40%	33%	4%
2004	9%	16%	75%	32%	37%	5%
2005	10%	11%	79%	37%	36%	6%
2006	5%	13%	83%	36%	38%	8%
2007	8%	15%	77%	32%	38%	6%
2008	18%	14%	68%	24%	41%	4%
2009	22%	10%	68%	14%	46%	8%
2010	51%	17%	32%	5%	25%	2%
2011	91%	4%	4%	0%	4%	0%
<b>Total</b>	<b>9%</b>	<b>16%</b>	<b>75%</b>	<b>35%</b>	<b>32%</b>	<b>8%</b>

These figures are calculated using Classic Filings from 1996 to 2011 that have been resolved. Out of the 2,562 Classic Filings that were resolved, 2,415 have specified outcomes.

1. These cases were settled after the first ruling on motion to dismiss but before the first ruling on summary judgment.

APPENDIX *continued*

## Appendix 3

## FILINGS BY INDUSTRY

Industry	Class Action Filings				DDL				MDL			
	Average 1997-2010	2009	2010	2011	Average 1997-2010	2009	2010	2011	Average 1997-2010	2009	2010	2011
Financial	39	78	43	25	\$20	\$28	\$15	\$32	\$121	\$247	\$65	\$252
Consumer Non-Cyclical	45	34	58	46	\$39	\$8	\$37	\$8	\$143	\$33	\$233	\$30
Industrial	17	11	9	24	\$14	\$22	\$0	\$4	\$42	\$97	\$2	\$12
Technology	27	10	14	22	\$15	\$3	\$1	\$22	\$82	\$9	\$4	\$78
Consumer Cyclical	22	10	13	21	\$8	\$13	\$4	\$7	\$56	\$69	\$79	\$15
Communications	32	12	16	24	\$26	\$7	\$11	\$28	\$198	\$71	\$40	\$76
Energy	5	6	12	17	\$3	\$1	\$2	\$3	\$19	\$4	\$28	\$23
Basic Materials	4	5	6	5	\$1	\$2	\$1	\$2	\$8	\$22	\$23	\$8
Utilities	3	0	3	4	\$2	\$0	\$0	\$0	\$11	\$0	\$1	\$0
<b>Total</b>	<b>193</b>	<b>166</b>	<b>174</b>	<b>188</b>	<b>\$129</b>	<b>\$84</b>	<b>\$72</b>	<b>\$106</b>	<b>\$680</b>	<b>\$550</b>	<b>\$474</b>	<b>\$493</b>

Analysis excludes one filing in the Computer Services sector in 2006, one filing in an unknown sector in 2009, and two filings in the Government and Service sectors in 2010.

## Appendix 4

## FILINGS BY COURT CIRCUIT

Circuit	Class Action Filings				DDL				MDL			
	Average 1997-2010	2009	2010	2011	Average 1997-2010	2009	2010	2011	Average 1997-2010	2009	2010	2011
1 <sup>st</sup>	10	5	7	7	\$6	\$14	\$2	\$1	\$23	\$51	\$8	\$3
2 <sup>nd</sup>	48	58	45	51	\$43	\$50	\$31	\$45	\$236	\$311	\$198	\$290
3 <sup>rd</sup>	16	13	14	14	\$21	\$1	\$12	\$2	\$74	\$7	\$54	\$3
4 <sup>th</sup>	7	3	6	9	\$3	\$2	\$0	\$1	\$15	\$9	\$4	\$6
5 <sup>th</sup>	13	10	8	12	\$9	\$1	\$1	\$0	\$46	\$14	\$10	\$1
6 <sup>th</sup>	10	5	10	9	\$8	\$1	\$1	\$1	\$32	\$6	\$6	\$13
7 <sup>th</sup>	10	8	13	6	\$7	\$5	\$11	\$0	\$30	\$12	\$43	\$2
8 <sup>th</sup>	8	2	10	7	\$4	\$0	\$3	\$3	\$16	\$2	\$26	\$5
9 <sup>th</sup>	48	41	51	54	\$19	\$4	\$9	\$50	\$161	\$65	\$102	\$162
10 <sup>th</sup>	6	7	1	8	\$3	\$5	\$0	\$0	\$14	\$53	\$0	\$3
11 <sup>th</sup>	18	15	9	10	\$6	\$1	\$3	\$2	\$28	\$21	\$19	\$5
D.C.	1	0	2	1	\$1	\$0	\$0	\$0	\$4	\$0	\$2	\$0
<b>Total</b>	<b>194</b>	<b>167</b>	<b>176</b>	<b>188</b>	<b>\$129</b>	<b>\$84</b>	<b>\$72</b>	<b>\$106</b>	<b>\$680</b>	<b>\$550</b>	<b>\$474</b>	<b>\$493</b>

The authors request that you reference the Stanford Law School Securities Class Action Clearinghouse and Cornerstone Research in any reprint of the charts and tables included in this study. Please direct any questions to:

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# **EXHIBIT 10**

24 July 2012

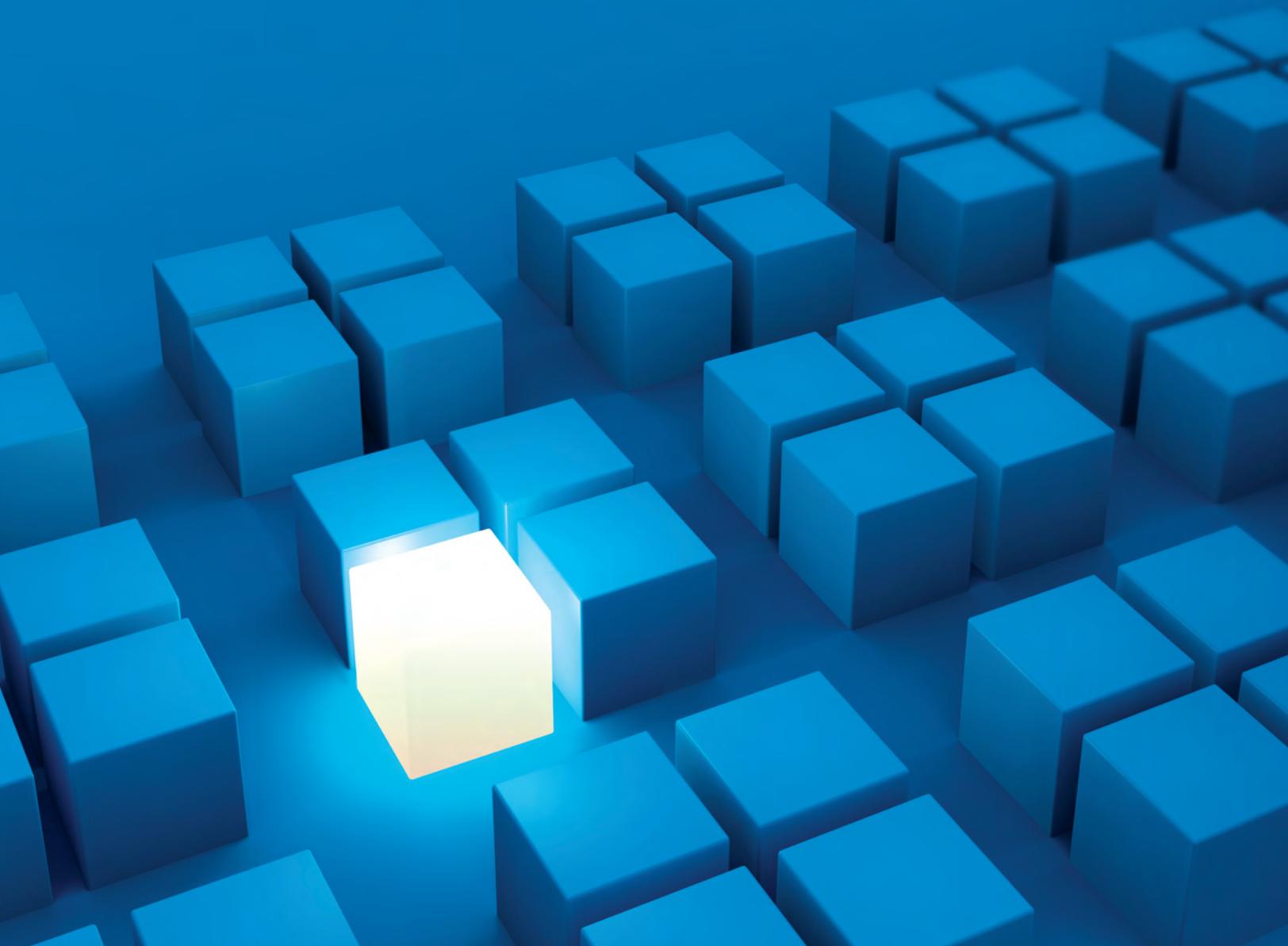


# **Recent Trends in Securities Class Action Litigation: 2012 Mid-Year Review**

Settlements bigger, but fewer

By Dr. Renzo Comolli, Dr. Ron Miller, Dr. John Montgomery, and Svetlana Starykh

**The pace of “standard” filings and the total value of potential claims are rising compared with the last three years.**



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24 July 2012

### **Mid-2012 Highlights in Filings**

- Filings on track to be as high or higher than in any of the last three years
- Merger objection suits continue to be a large proportion of filings
- No new filings with accounting codefendants

### **New Analysis of Motions**

- Of the cases that settled, 90% had a motion to dismiss filed and 42% had motion for class certification filed
- Settlement amounts depend on the litigation stage at which settlement is reached

### **Mid-2012 Highlights in Settlements**

- Settlement pace slowing down markedly
- Average settlement amounts rebound to levels close to the all-time high

## Introduction and Summary<sup>1</sup>

Securities class actions filed in Federal court have continued to be filed at their historical pace so far in 2012, but their composition has changed significantly. Last year, a wave of filings against Chinese companies, often involving reverse mergers, made the news. This year, those cases have greatly decreased in number. Merger objection cases continue to be a major portion of total filings, as they have since 2010.

The targets of litigation have been changing. Financial sector firms' share of filings in 2012 is smaller than it has been since 2005 while filings in the technology and health care sectors have risen. Accounting firms had frequently been named as codefendants in securities class actions in the past and had figured prominently in some of the largest settlements. However, since 2010 there have been relatively few accounting firms named and so far this year there have been none at all.

While filings have continued at their typical rate, settlements have not kept pace. The rate of settlements this year is on track to make 2012 the slowest year for settlement activity since 1999 and many of the settlements that have been reached do not include monetary compensation for investors.

Although the number of cases settled this year is low, the cases that have settled are relatively big ones. The average settlement value is more than double last year's level and higher than the recent historical average.

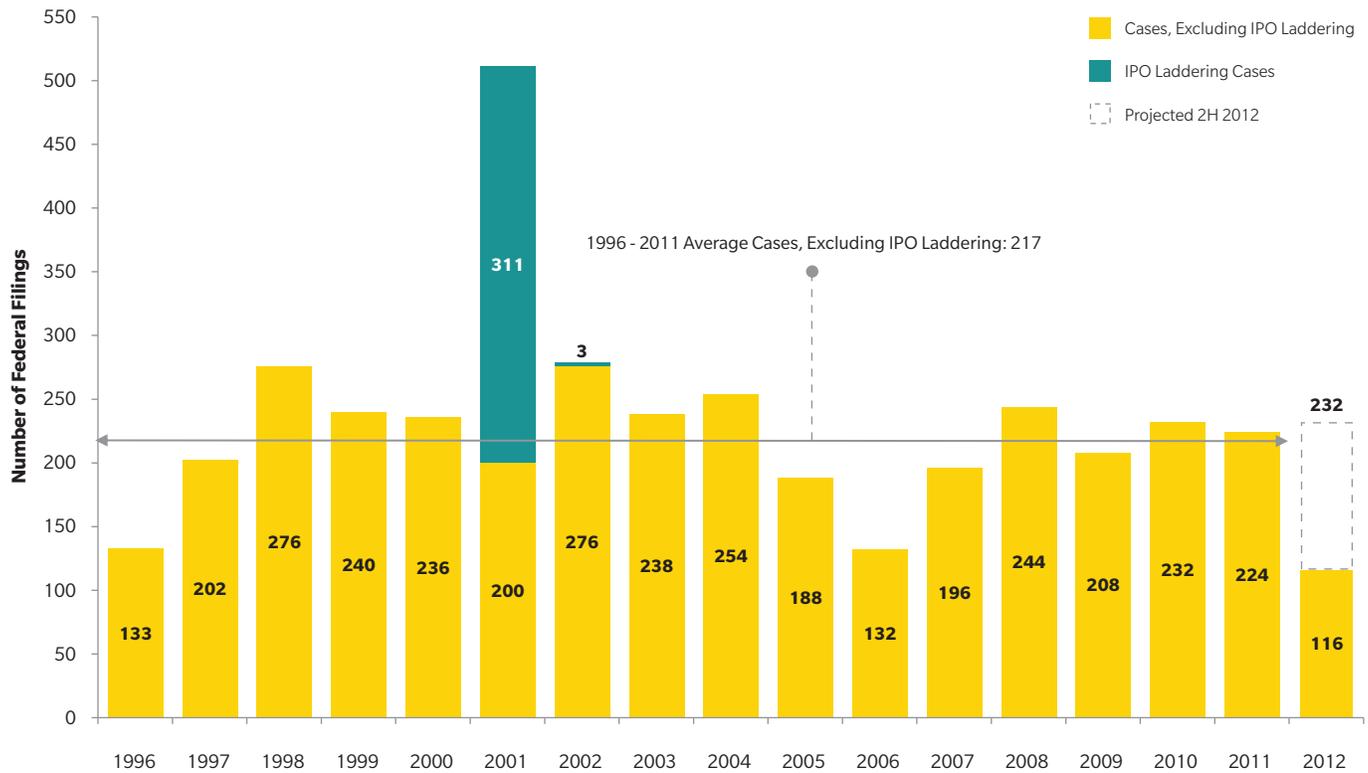
We also report newly-compiled statistics on the settlement value by status of the motions filed in those cases. Among other things, we find that most settlements occur after a motion to dismiss has been filed but before a motion for class certification has been decided.

## Trends in Filings<sup>2</sup>

### Rate of Filings

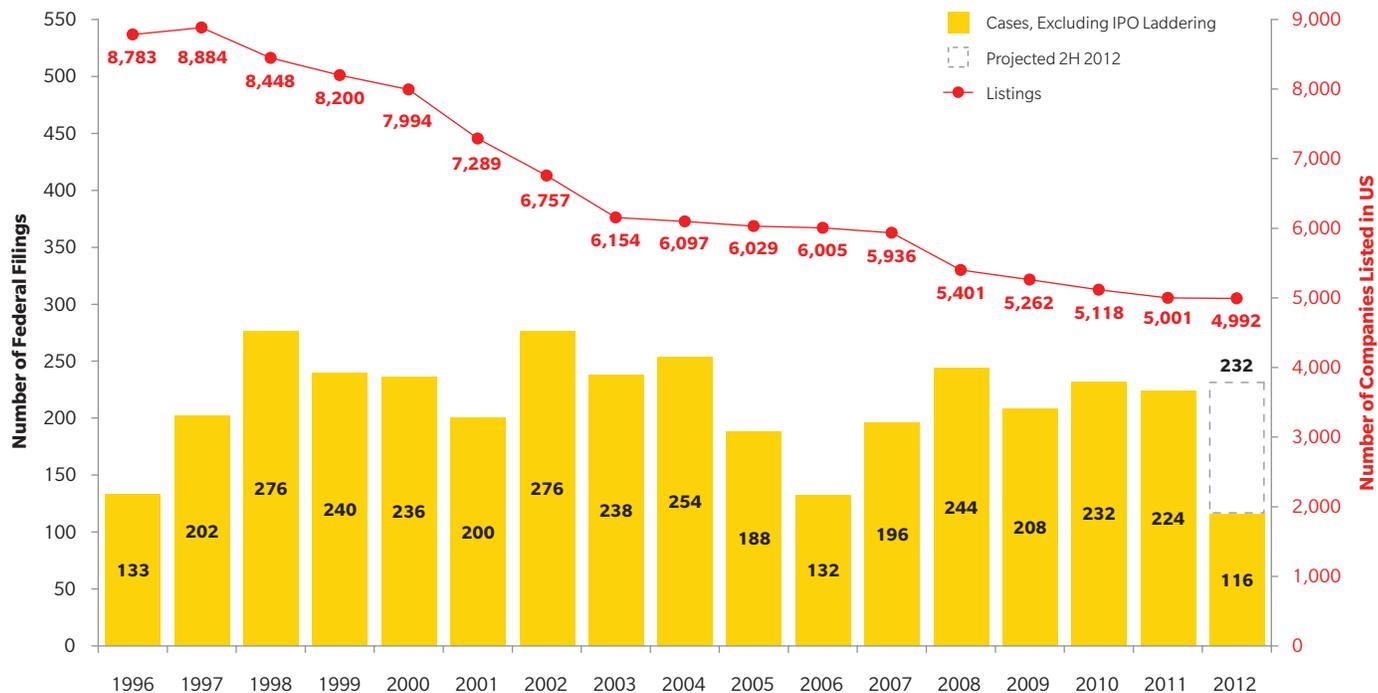
Federal filings of securities class actions are keeping up with the average pace since the passage of the Private Securities Litigation Reform Act (PSLRA) in 1995. In the first half of this year, 116 such actions were filed. At this pace, there will be 232 class actions filed in 2012 as a whole; for comparison, on average, 217 class actions were filed annually, between 1996 and 2011.<sup>3</sup> Although the number of class actions since 1996 has fluctuated from year to year, the longer-term average has remained substantially stable over time. See Figure 1.

Figure 1. **Federal Filings**  
January 1996 – June 2012



In contrast, the number of companies listed in the US has decreased markedly, by about 43% since 1996. Thus, the average company listed in the US is significantly more likely to be the target of a securities class action now than it was in 1996. See Figure 2.

Figure 2. **Federal Filings and Number of Companies Listed in United States**  
January 1996 – June 2012



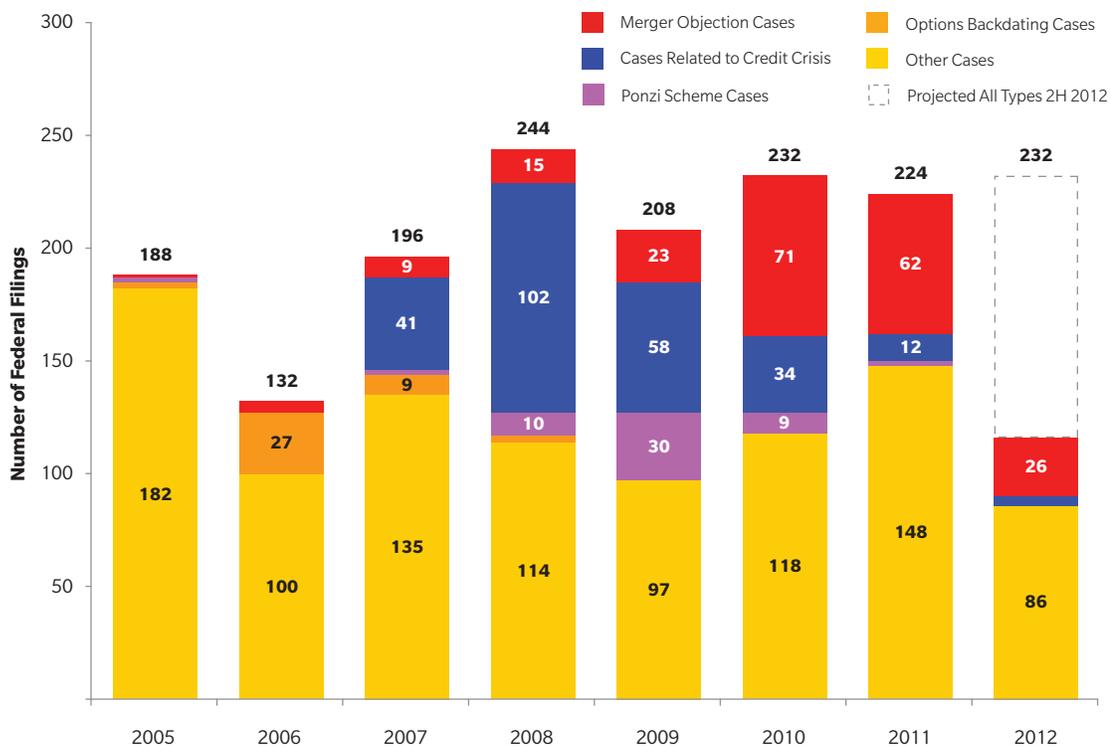
Note: Number of companies listed in US is from Meridian Securities Markets.

## Filings by Type

Filings for the first half of 2012 included 26 merger objection cases and 83 cases alleging the violation of at least one of the following: Section 10b of the Securities and Exchange Act (including Rule 10b-5), Section 11, or Section 12 of the Securities Act. Credit crisis cases are becoming rarer as the events of 2008 fade into the past.<sup>4</sup> Only four credit crisis-related cases have been filed so far in 2012.

See Figures 3 and 4.

Figure 3. **Federal Filings by Type of Case**  
January 2005 – June 2012



### Merger objection cases

There continued to be a relatively large number of merger and acquisition objection cases (merger objection cases) in recent years. Merger objection cases first represented an important component of federal filings in 2010, when they amounted to 31% of filings. These cases are brought on behalf of shareholders of a target company in a merger or acquisition, and typically rest on allegations that the directors of the target company breached their fiduciary duty to shareholders either by accepting a price for the shares that was too low or by providing insufficient disclosures about the value of the deal. These cases differ in many ways from the more traditional securities class actions, including legal aspects, dismissal rates, settlement amounts, and the speed with which they are typically resolved. Some of these differences are discussed below.

The merger objection cases differ in another important way from other recent waves of securities litigation such as IPO laddering, options backdating, credit crisis-related cases, and Chinese reverse mergers. To generalize, these earlier waves of litigation originated with particular actions, or alleged actions, of issuers that ended soon after the litigation began, either because of the litigation itself or because of the end of the underlying issue. Because of that quick end to the source of the litigation issue, a defined pool of companies that could be sued was created and the wave ended naturally when the pool was exhausted. Not so for the merger objection cases, where the litigated issues could potentially relate to any merger or acquisition. As such, the merger objection cases may continue indefinitely, in the absence of substantial changes in the legal environment, their number fluctuating with market cycles in M&A activity.

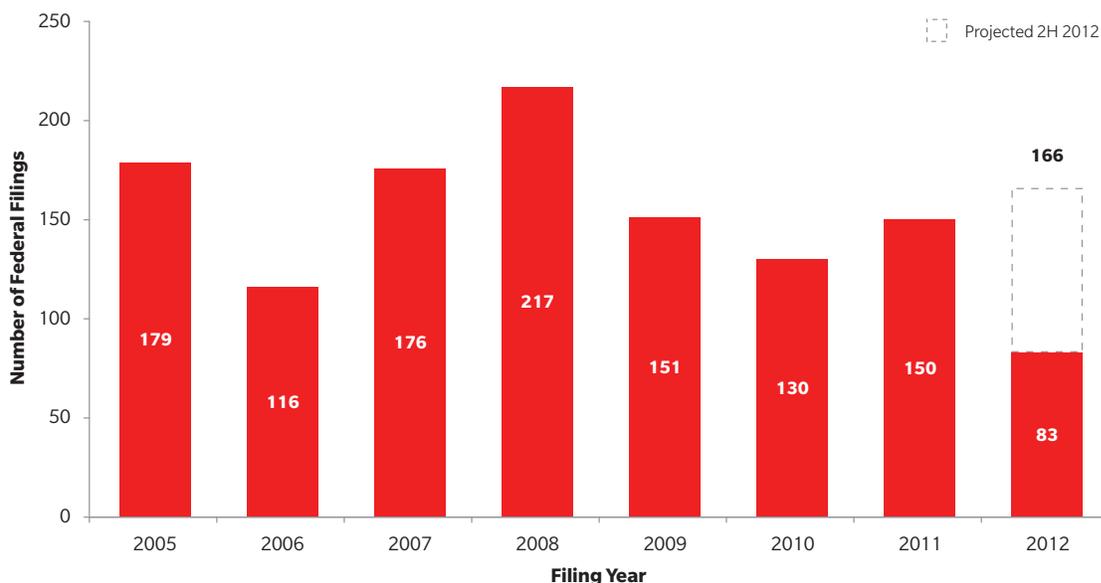
The decline in the number of companies listed in the US, discussed above, may be contributing to the shift towards less traditional types of securities class actions, such as merger objection cases. The reduction in traditional targets may give plaintiffs' firms an incentive to innovate in the kinds of cases that they bring.

It is also worth noting that the merger objection cases depicted in figure 3 are only the federal securities class action cases. Many more merger objection cases are filed in state courts or as derivative actions. In fact, almost three times as many deals have been the target of state class actions as have been subject to federal securities class actions.<sup>5</sup>

#### *Rule 10b-5, Section 11, and Section 12*

Class actions alleging violations of Rule 10b-5, Section 11, and/or Section 12 historically have represented a large majority of federal securities class actions filed and are sometimes viewed as the "standard" type of securities class action.<sup>6</sup> Figure 4 depicts such cases for the period 2005 to today. These "standard" filings peaked in 2008 with the credit crisis. So far this year, 83 such securities class actions have been filed. If filings continue at this pace, by the end of the year, 166 class actions will have been filed—more than in any of the last three years, but well below the 2008 peak.

Figure 4. **Federal Filings Alleging Violation of Any of: Rule 10b-5, Section 11, or Section 12**  
By Filing Year; January 2005 – June 2012



New filings in 2012 also represent a larger total dollar volume of potential claims than in the last few years. We gauge potential claims with NERA’s investor losses measure. This is a proxy for the aggregate amount that investors lost from buying the defendant’s stock during the class period relative to investing in the broader market; it is also a rough proxy for the size of plaintiffs’ potential claims. Aggregate investor losses are simply total investor losses across all cases for which investor losses are computed.<sup>7</sup> At their current rate of accumulation, aggregate investor losses by the end of 2012 would be larger than those in any of the previous three years. See Figure 5. Aggregate investor losses are up not only because the number of cases has grown but also because investor losses for a typical case has grown. The median investor losses in the first six months of 2012 have been more than twice the median investor losses in 2010 or 2011. See Figure 6.

Figure 5. **Aggregate Investor Losses for Federal Filings with Alleged Violations of Rule 10b-5, Section 11, or Section 12**  
By Filing Year; January 2005 – June 2012

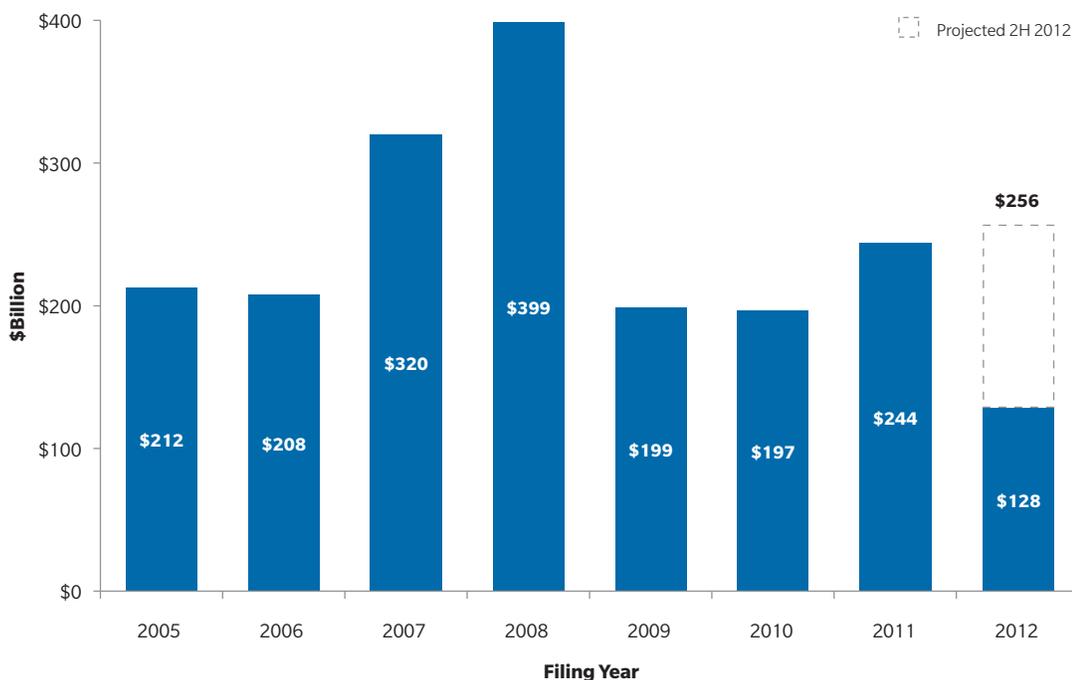
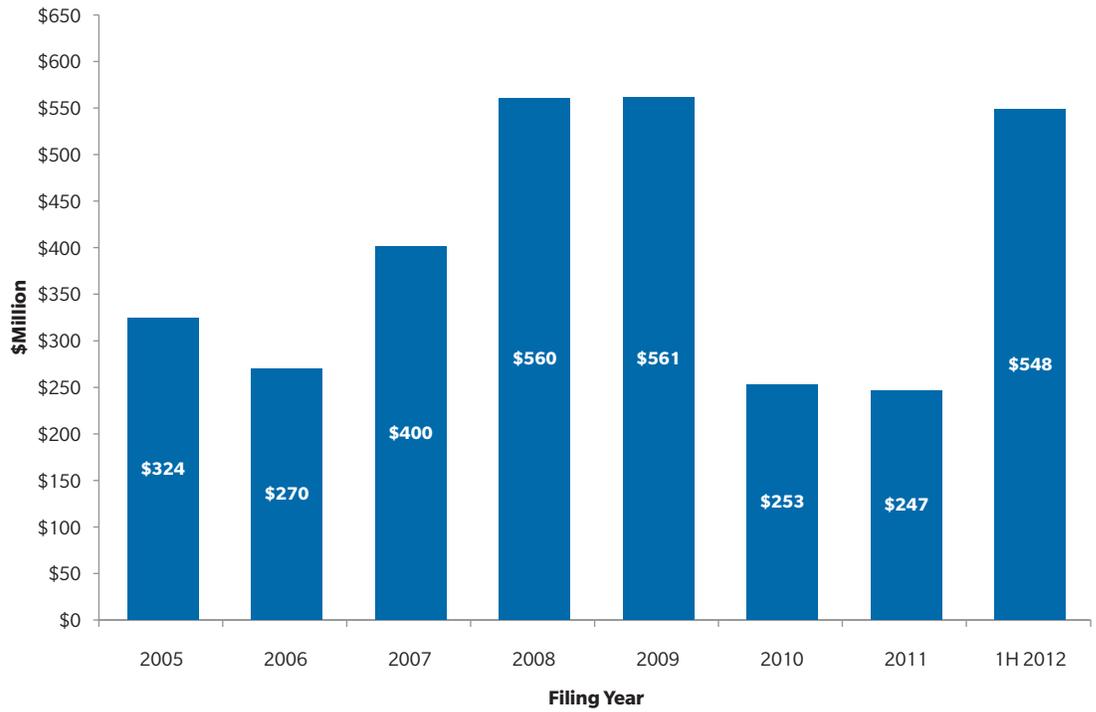


Figure 6. **Median Investor Losses for Federal Filings with Alleged Violations of Rule 10b-5, Section 11, or Section 12**  
By Filing Year; January 2005 – June 2012

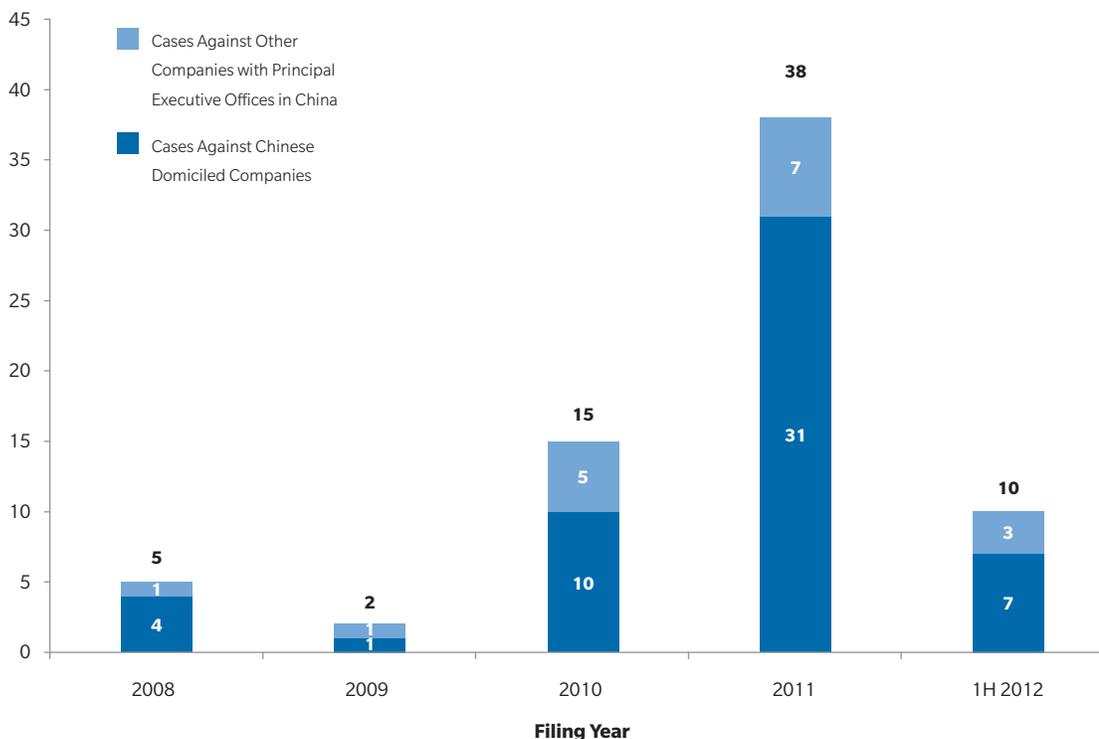


### Filings by Issuer’s Country of Domicile<sup>8</sup>

Last year, the big story for securities class action filings was the wave of cases involving Chinese companies listed in the US. This wave of litigation also has been referred to as the “Chinese reverse merger litigation” because of the way many such companies were listed in the US.<sup>9</sup>

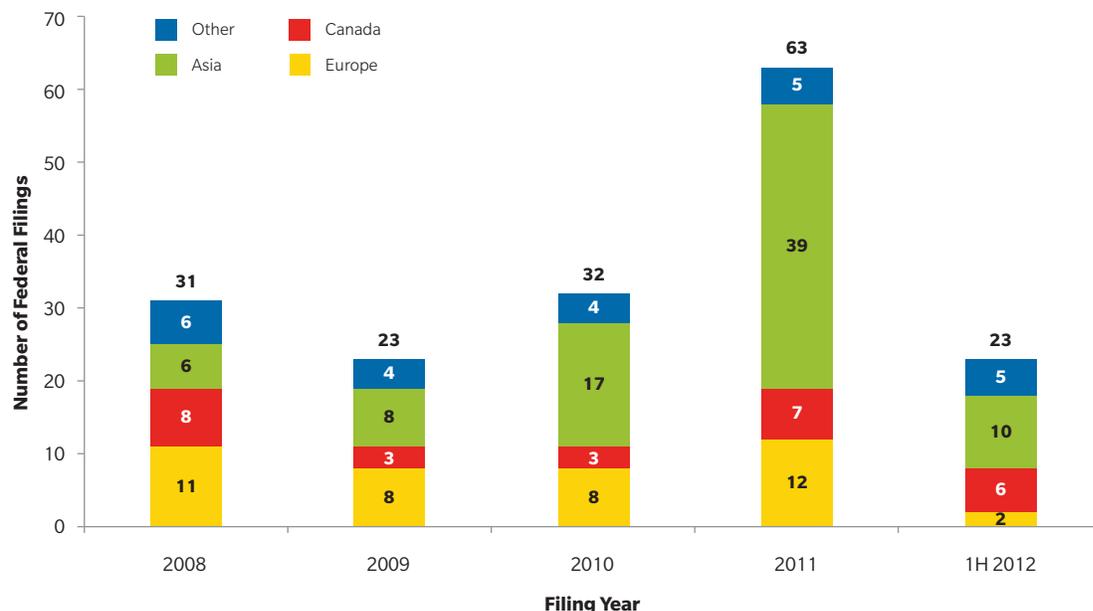
This year, the number of these cases has dropped dramatically. Only 10 cases against Chinese companies listed in the US have been filed so far in 2012, less than half of the 2011 filing rate. See Figure 7. The reduced pace of filings against Chinese companies has at least two potential explanations. First, requirements for listing in the US through the reverse merger process have been tightened.<sup>10</sup> Second, the flurry of filings against Chinese companies may have made US listings less attractive for Chinese companies, because of increased potential legal costs.

Figure 7. **Number of Federal Filings Against Chinese Companies**  
January 2008 – June 2012



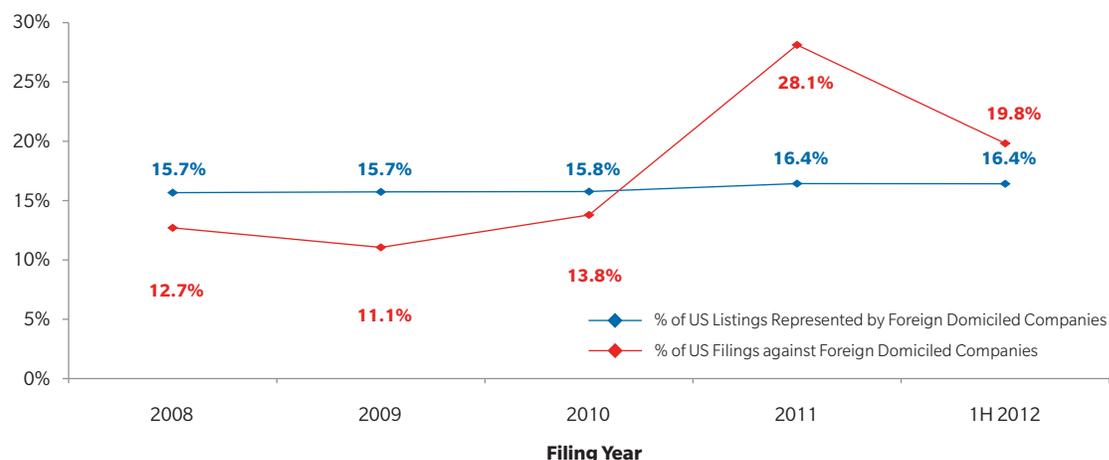
The number of cases filed against all foreign-domiciled companies is decreasing too, due to the decrease in filings against Chinese companies. See Figure 8. With the fall in filings against Chinese issuers, the rate of securities class actions filings against foreign companies listed in the US has now reverted to a level only slightly above the rate for US companies. In the first half of 2012, the proportion of securities class actions involving foreign companies was approximately the same as the proportion of foreign companies among issuers. See Figure 9.

Figure 8. **Filings by Company Domicile and Year**  
January 2008 – June 2012



Note: Companies with principal executive offices in China are included in the totals for Asia.

Figure 9. **Foreign Domiciled Companies: Share of Filings and Share of All Companies Listed in United States**  
January 2008 – June 2012



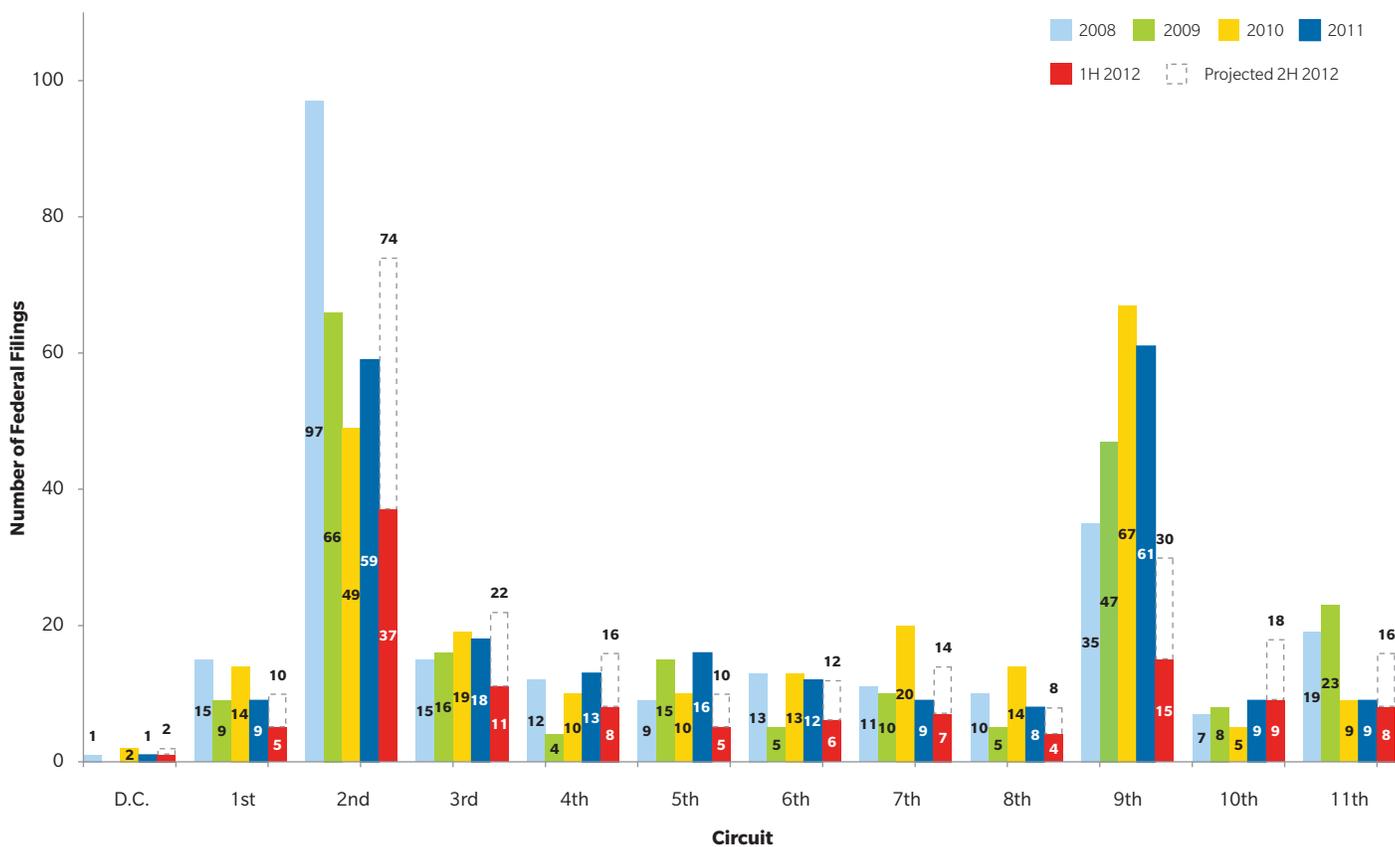
Note: Companies with principal executive offices in China are included in the counts of foreign companies. Listings data are from Meridian Securities Markets. 2008 – 2011 data are as of respective year end, 2012 data are as of April.

### Filings by Circuit

Filings remain concentrated in two circuits: the Second (encompassing New York, Connecticut, and Vermont), and the Ninth (including California, Washington, and certain other Western states and territories). However, in the first half of 2012 the balance between these two circuits was substantially different from that in previous years.

During the first half of this year, filings in the Second Circuit have been made at a higher pace than in any recent year except 2008. Filings in the Ninth Circuit, by contrast, have decreased substantially. At their current pace, there will be only 30 filings in the Ninth Circuit this year, which would be the lowest total since the passage of the PSLRA in 1995. See Figure 10.

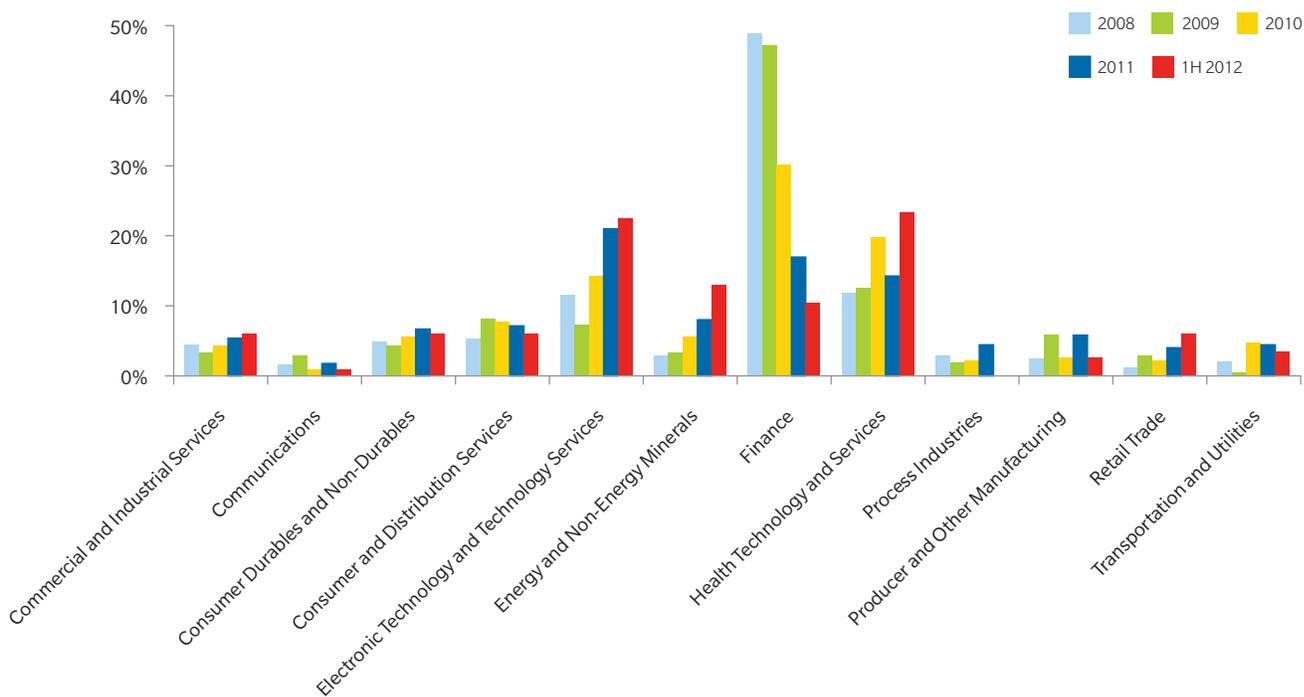
Figure 10. **Federal Filings by Circuit and Year**  
January 2008 – June 2012



### Filings by Sector

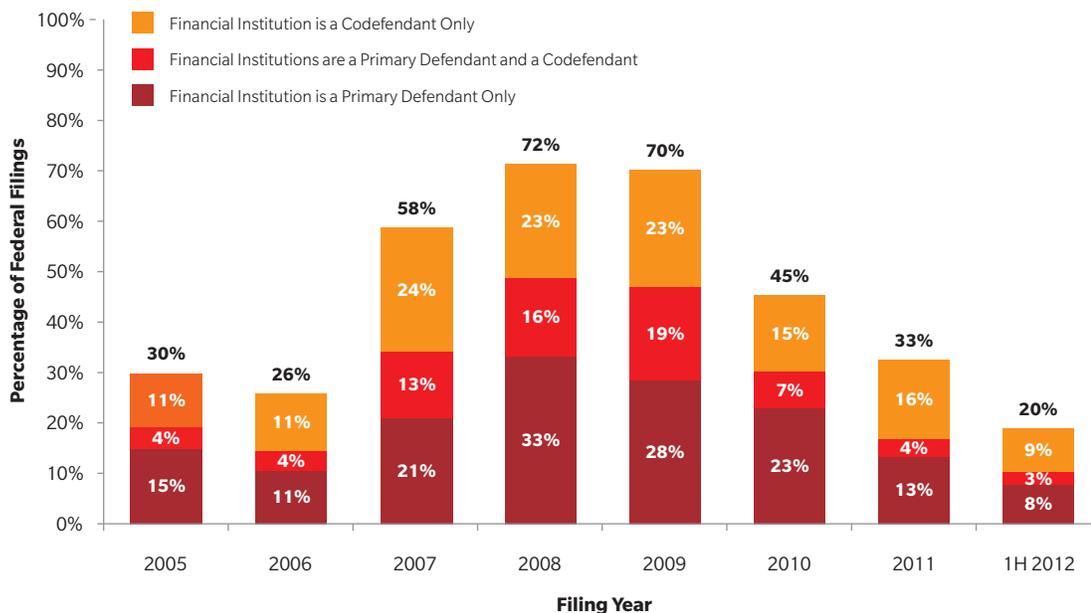
In 2008 and 2009, with the fallout from the credit crisis, filings of securities class actions against companies in the financial sector reached a peak, amounting to nearly half of all securities class actions. The share of filings against companies in the financial sector has declined since then. The decline continued in the first half of this year, in which financial companies represented only 11% of issuers subject to securities class actions. See Figure 11. These figures refer to companies named as primary defendants; companies in the financial sector also have been named as codefendants. Including codefendants, the fraction of cases involving a financial company is 19%, the lowest percentage since at least 2005. See Figure 12.

Figure 11. **Filings by Sector and Year**  
January 2008 – June 2012



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Figure 12. **Federal Cases in which Financial Institutions Are Named Defendants**  
 January 2005 – June 2012



The share of securities class actions with a defendant in the electronic technology and technology services or health technology and services industries has continued to increase, reaching 22% and 23%, respectively. The share of securities class action filings against issuers in the energy and non-energy minerals sector also has grown.

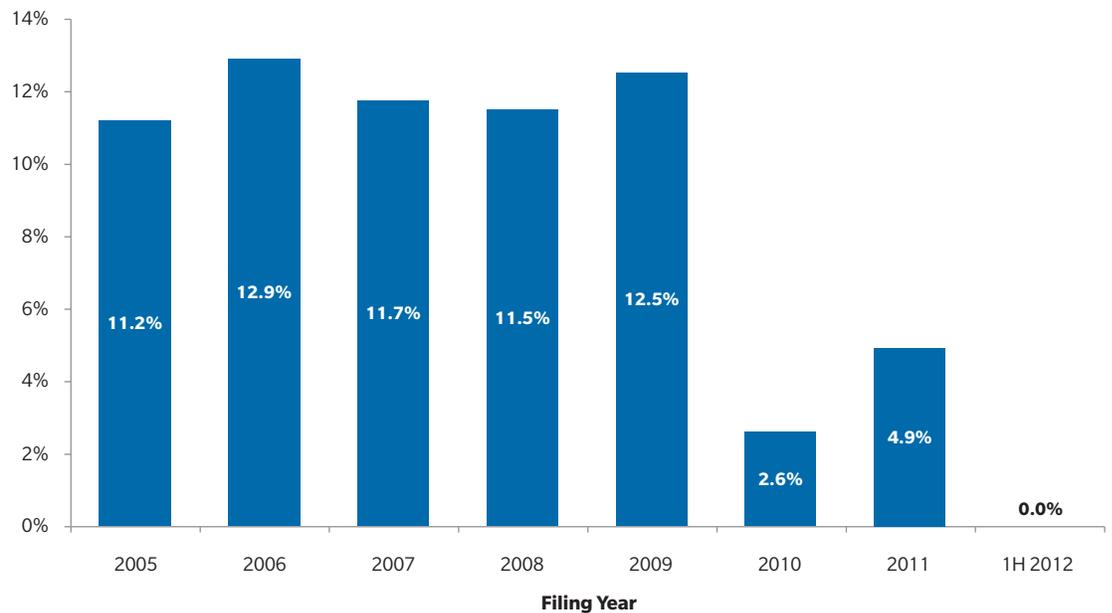
*Accounting codefendants are becoming rare*

Historically, a substantial fraction of securities class actions included an accounting firm as a codefendant. Over 2005-2009, 12% of cases had accounting codefendants; during 2010-2011, that percentage fell to 4%. So far this year, not a single newly filed federal securities class action has included an accounting codefendant. See Figure 13.

This dramatic change may be the result of changes in the legal environment. The Supreme Court’s 2011 decision in *Janus* limited the ability of plaintiffs to sue parties not directly responsible for misstatements. Commentators have noted that, as a result of this decision, auditors may be liable only for statements made in their audit opinion.<sup>11</sup> Further, this decision comes after the Court’s 2008 decision in *Stoneridge* limiting scheme liability. The cumulative effect appears to have made accounting firms relatively unattractive targets for securities class action litigation.

Despite the virtual disappearance of accounting codefendants, accounting allegations against any defendant are still a common feature in newly filed cases; in 2012, 26% of securities class action filings included allegations of accounting violations. See portion labeled “Accounting” in Figure 14.

Figure 13. **Percentage of Federal Filings in Which an Accounting Firm is a Codefendant**  
January 2005 – June 2012

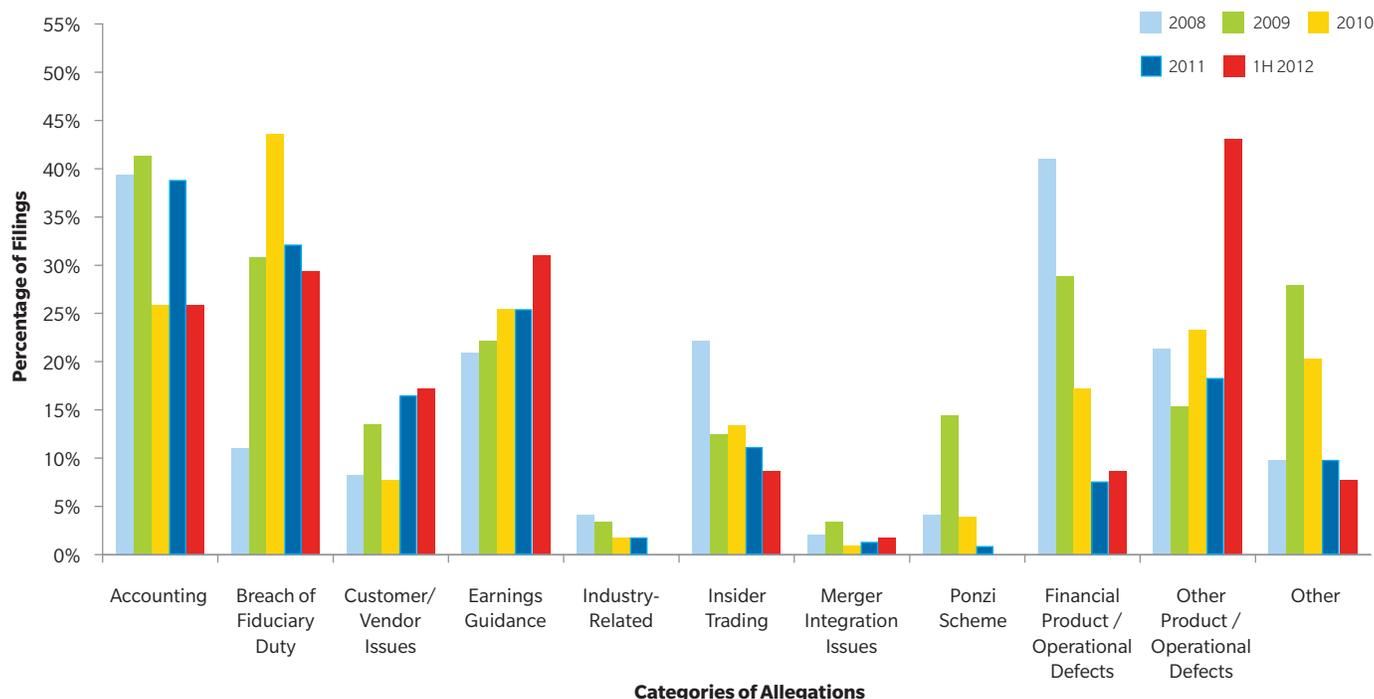


## Allegations

NERA reviews complaints in securities class action filings to evaluate trends in the types of allegations that are made. Figure 14 contains the percentages of filings with allegations in different categories.<sup>12</sup>

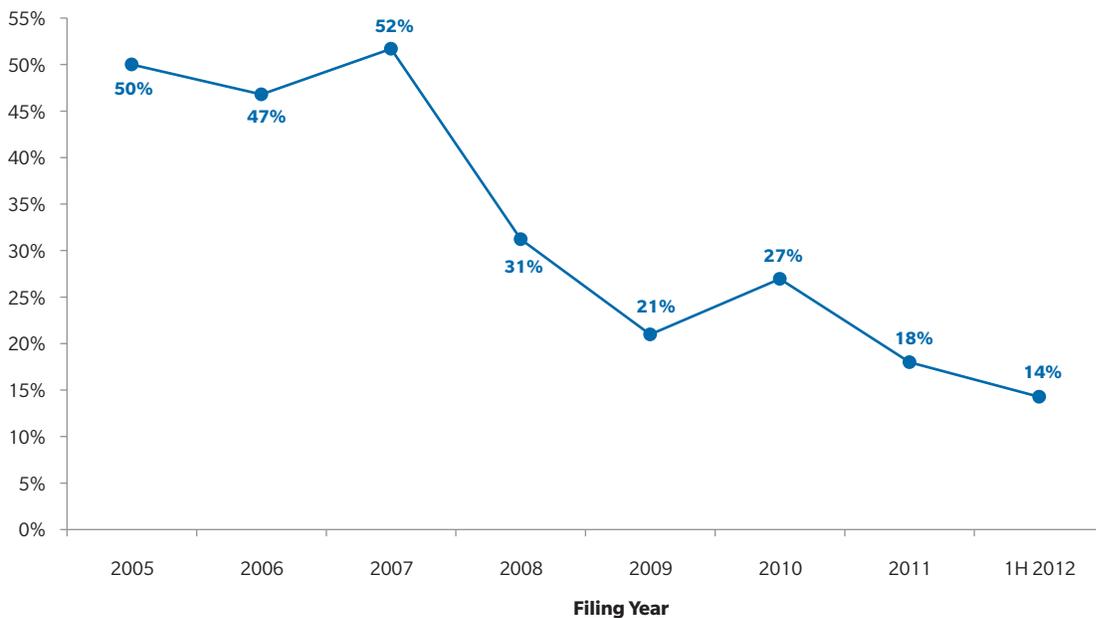
So far in 2012, allegations related to product defects and operational shortcomings (other than financial) have been the most prevalent, having been made in almost 45% of complaints. Allegations related to earnings guidance, breach of fiduciary duty (typical in the merger objection cases), and accounting were each made in more than a quarter of the complaints filed.

Figure 14. **Allegations in Federal Filings**  
January 2008 – June 2012



The fraction of securities class actions alleging violations of Rule 10b-5 that also allege insider sales has continued to decrease in 2012 and has reached a new low since we started tracking these data in 2005.<sup>13</sup> Only 14% of the class actions alleging violations of Rule 10b-5 have alleged insider sales in the first half of 2012. See Figure 15.

Figure 15. **Percentage of Federal Filings Alleging Violations of Rule 10b-5 with Insider Sales Allegations**  
By Filing Year; January 2005 – June 2012

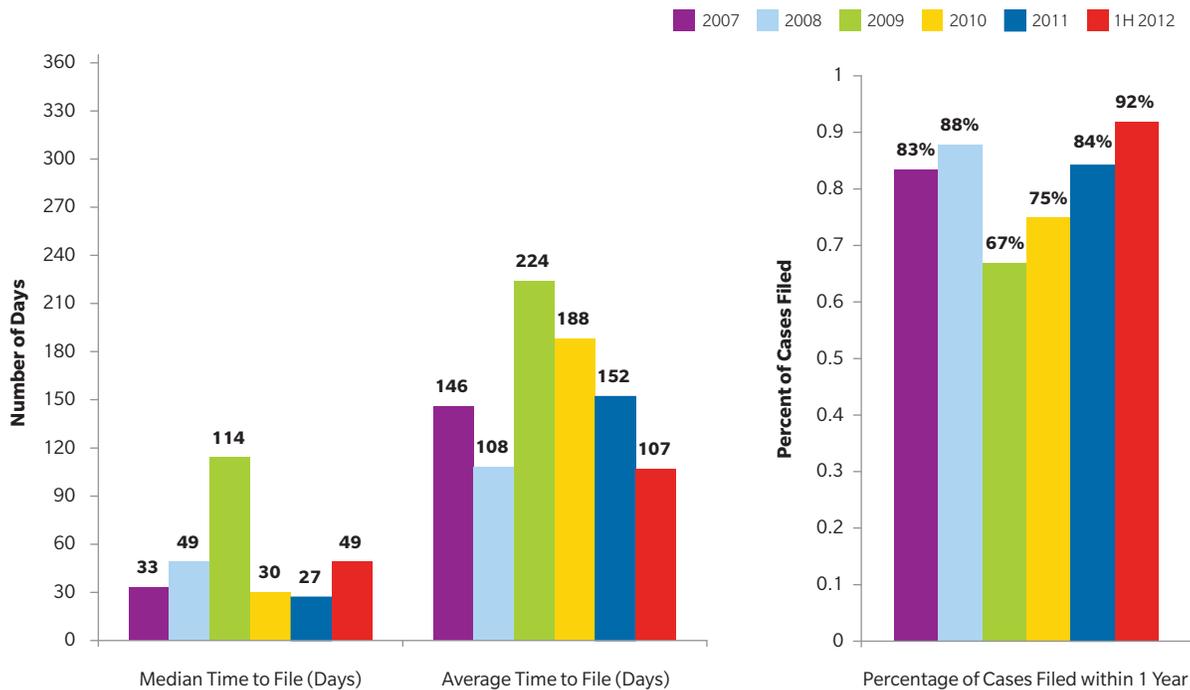


**Time to File**

For Rule 10b-5 cases, we define “time to file” as the time from the end of the alleged class period to the date of filing of the first complaint. The average time to file has been decreasing since 2009. In the first half of 2012, it took 107 days, on average, for a complaint to be filed. This is down from a high of 224 days in 2009 and from 120 days in 2011. See Figure 16.

The median time to file was 49 days in the first half of 2012, meaning that half of the complaints were filed within 49 days. Unlike the average time to file, the median time to file is longer than in 2011, when it was only 27 days.

Figure 16. **Time to File**  
 Filings Alleging Violation of Rule 10b-5  
 January 2007 – June 2012



This analysis excludes cases where the alleged class period could not be unambiguously determined.

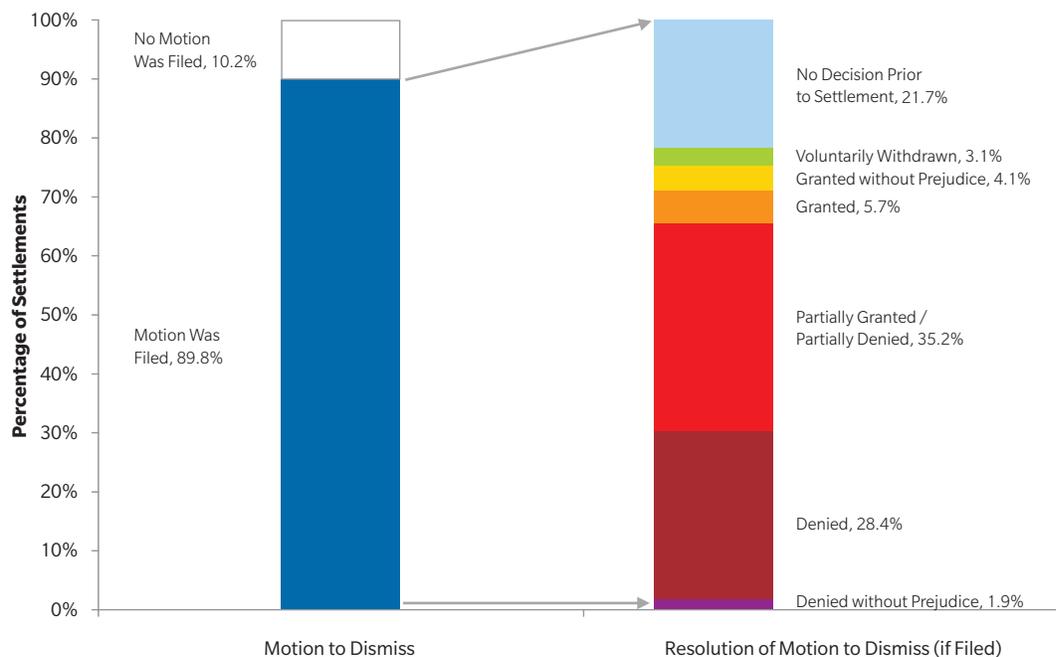
## Analysis of Motions

In an important addition to NERA’s analysis of class actions, we have now collected data on motions and their resolutions, for federal securities class actions filed and settled in 2000 or later.<sup>14</sup> Specifically, we have collected data on motions to dismiss, motions for class certification, and motions for summary judgment. These data allow new insight into the process of the litigation of securities class actions and the relation between developments in litigation and the settlement that is ultimately reached. In this section we report on our first analysis based on the status of motions.

Motions to dismiss had at least been filed in the vast majority—nearly 90%—of the cases that settled: the remaining cases settled before any such motion had been filed. In almost 22% of cases where a motion to dismiss had been filed, settlement was reached before the court reached a decision on the motion.

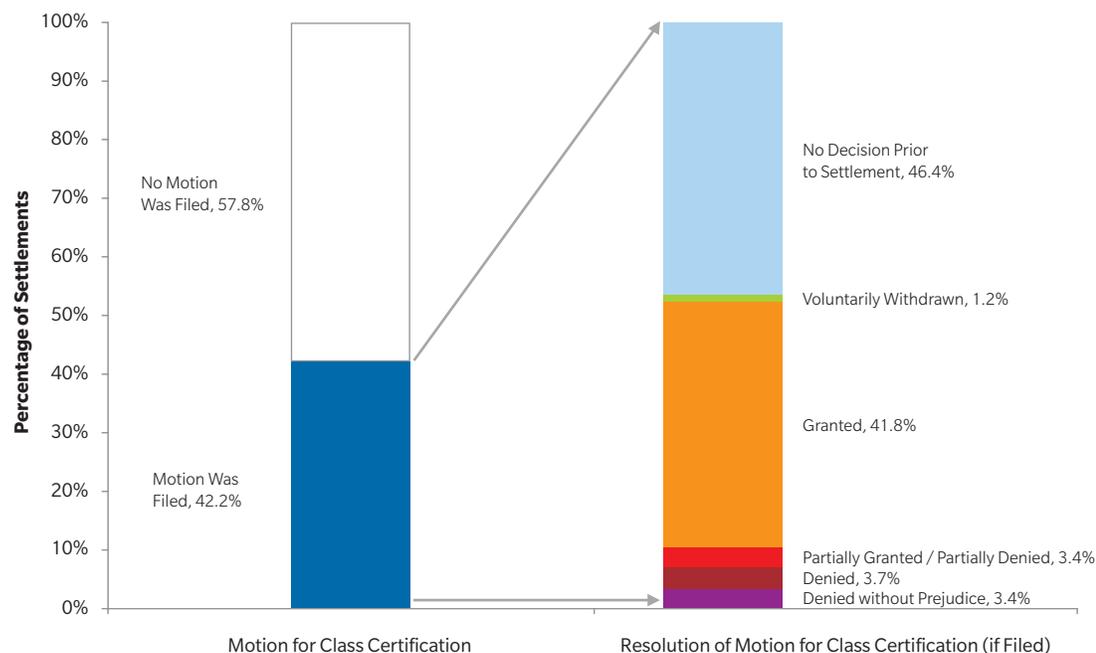
Next we turn to the resolutions of the motion to dismiss. The most frequent decision on the motion to dismiss was a partial grant/partial denial, at 35% of cases filed, followed by complete denial for 28% of cases. A motion to dismiss was granted in 10% of cases that ultimately settled.<sup>15</sup> It is important to note that our data on resolutions are based on the status of the case at the time of settlement—for example, some cases that have been dismissed still reach settlement. These dismissals were likely either without prejudice or under appeal at the time of settlement; had these cases not settled, there was a chance the cases would be refiled or the dismissals would be reversed. As a result of our focus on settled cases, our data do not include the many cases which terminated with a dismissal, without a settlement. See Figure 17 for more details.

Figure 17. **Filing and Resolutions of Motions to Dismiss**  
Cases Filed and Settled January 2000 – June 2012



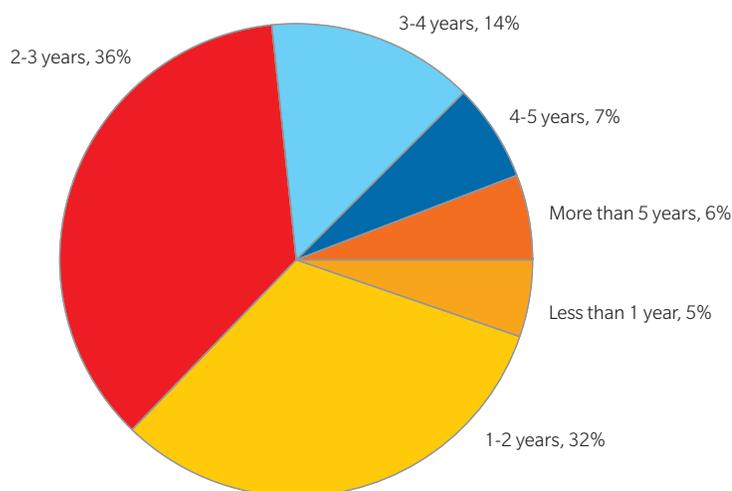
Most cases that settle do so before a motion for class certification is filed—58% of settled cases fall into this category. Of the settled cases for which a motion for class certification had been filed, 46% settled before the motion was resolved. A further 45% of the cases with a class certification motion end up with a certified class. See Figure 18 for more details.

Figure 18. **Filing and Resolutions of Motions for Class Certification**  
Cases Filed and Settled January 2000 – June 2012



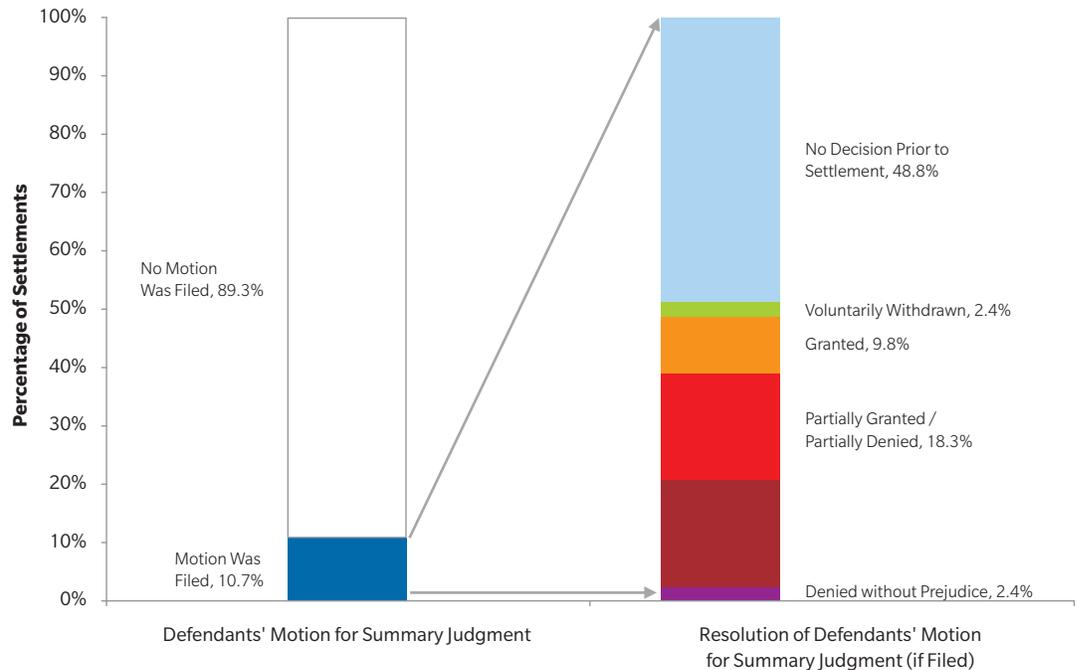
While most cases reach settlement before any decision on class certification, the cases that reach this point provide a measure of the overall speed of the legal process. For those cases in which the motion of class certification was eventually decided, the decision came within three years of the original file date of the complaint for almost three quarters of the cases. See Figure 19. It is possible that, with the Supreme Court having granted *certiorari* in *Amgen*, the speed with which a decision on the motion of class certification is reached will slow down, at least until *Amgen* is decided.

Figure 19. **Time From Complaint Filing to Class Certification Decision**  
Cases Filed and Settled January 2000 – June 2012



Motions for summary judgment had been filed by defendants in only 11% of the cases that ultimately settled. See Figure 20 for details on the outcomes when cases settled after defendants filed such a motion. A very small number of motions for summary judgment were filed by plaintiffs.

Figure 20. **Filing and Resolutions of Defendants' Motions for Summary Judgment**  
Cases Filed and Settled January 2000 – June 2012



Unsurprisingly, the status of motions at the time of settlements affects typical settlement values. For example, for cases settled 2008 through 2012, the median settlement value is \$9.1 million. For cases in which a class was certified at the time of settlement, the median settlement is \$16.5 million, over the same period. In general, however, the relationship between settlement values and motion status at the time of settlement is complicated. Strategic considerations for both parties to the litigation can have an important influence on the stage at which a settlement occurs. Different kinds of cases are likely to settle at different points in the process, making simple comparisons across all cases difficult. Despite this difficulty, NERA research has found that there are statistically robust relationships between motion status and ultimate settlement values, when other case characteristics are taken into account. It is beyond the scope of this paper to provide details on this research.

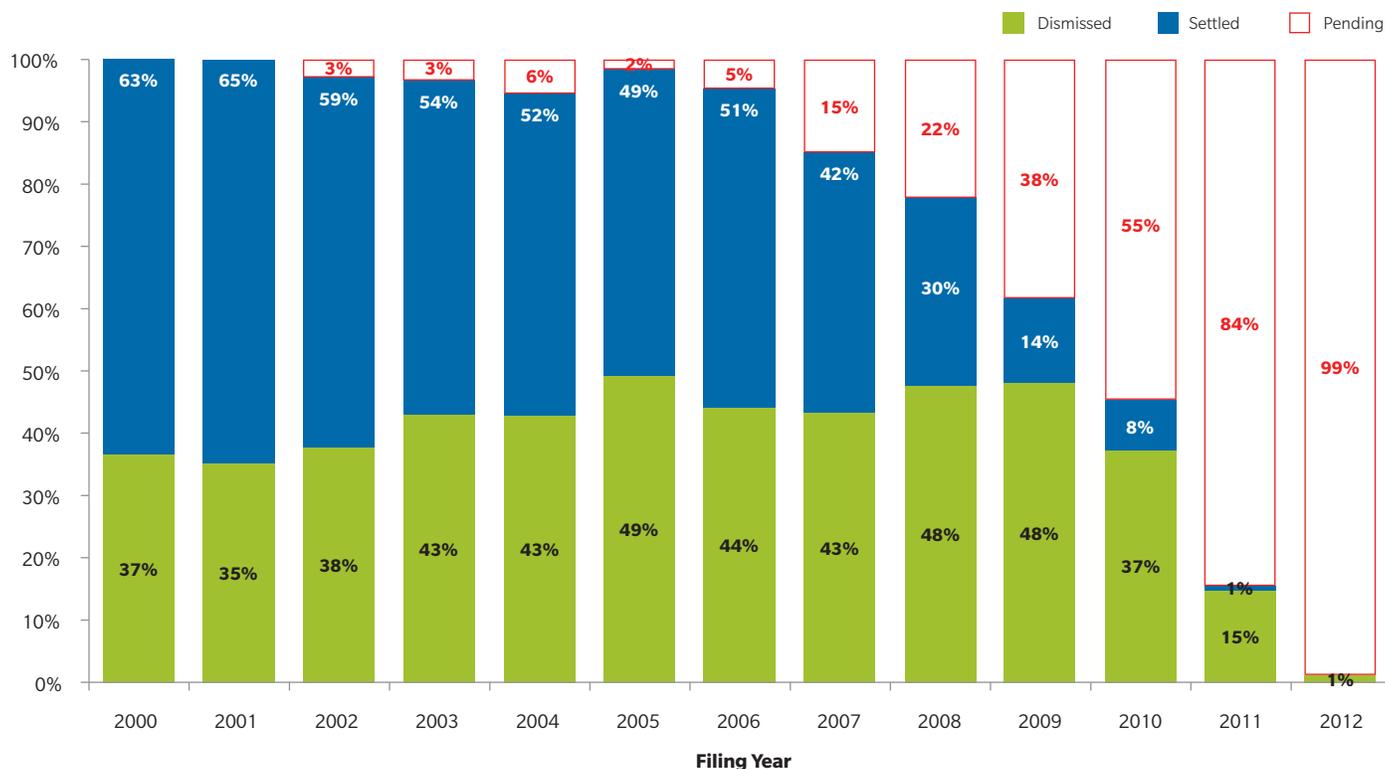
## Trends in Case Resolutions

The typical securities class action takes several years to reach a final resolution, and some take a decade or more. Only a small fraction of securities class actions go to trial (see below), while the large majority of them are settled or dismissed.<sup>16</sup>

To analyze resolutions, we focus on annual “cohorts” of cases filed in different years. The 2001 cohort is the most recent one for which all cases have been resolved. For that cohort, 35% of cases were ultimately dismissed and 65% ultimately settled. For the next five annual cohorts, spanning the years 2002-2006, more than 94% of cases have been resolved. Results for these more recent cohorts indicate that the dismissal rate may be increasing. Indeed, for each annual cohort from 2003 to 2006, the dismissal rate has been 43% or more. These figures will ultimately change somewhat, because some cases are not yet resolved and other cases that have been dismissed may see reversals on appeal or be filed again (for cases dismissed without prejudice). Nonetheless, the evidence so far suggests that these more recent annual cohorts will ultimately see a higher dismissal rate than had been seen in earlier years. See Figure 21.

A larger proportion of cases in the 2007-2012 cohorts await resolution. It is too early to know the exact dismissal rate for cases filed in these recent years. That said, the preliminary data, as shown in the chart, suggest a continuing higher dismissal rate.

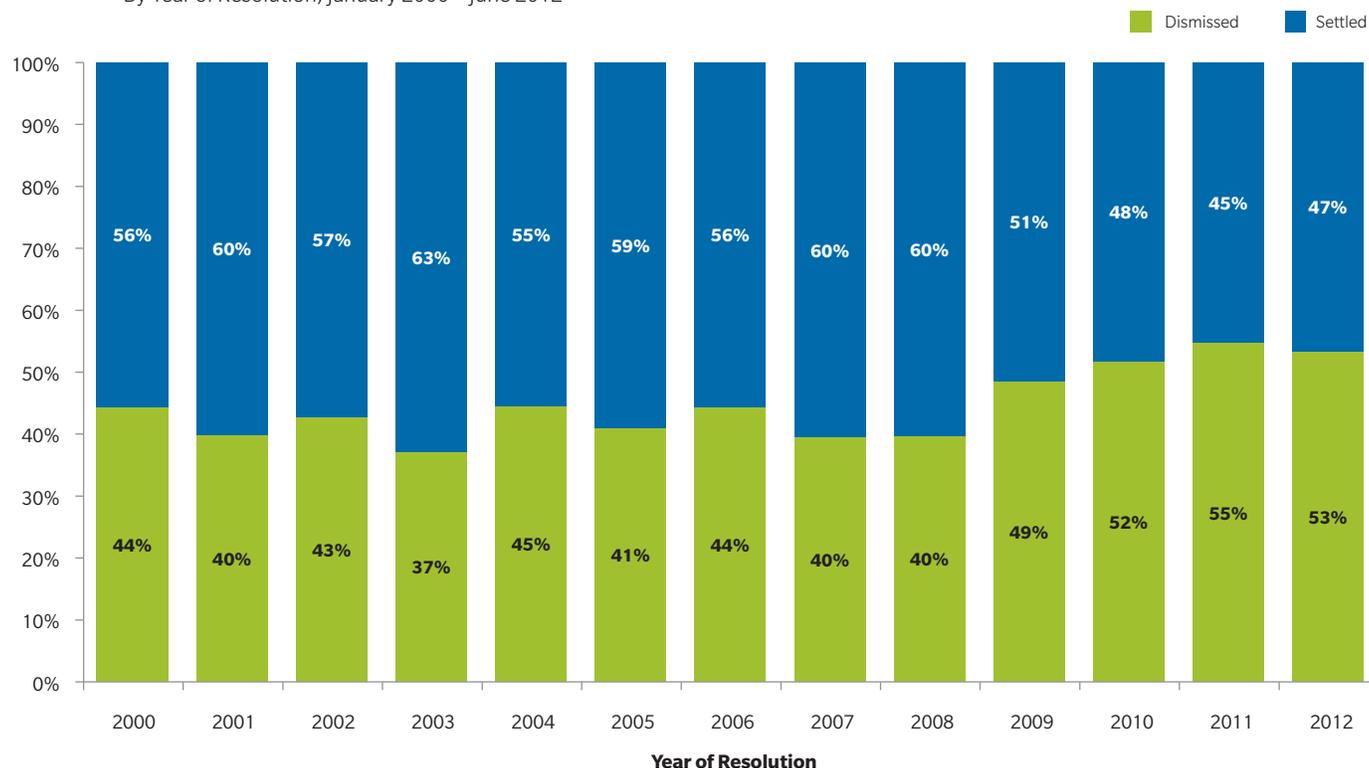
Figure 21. **Status of Cases as Percentage of Federal Filings**  
By Filing Year; January 2000 – June 2012



Note: Analysis excludes IPO laddering, merger objection cases, and verdicts. Dismissals may include dismissals without prejudice and dismissals under appeal.

An alternate way to look at dismissal rates is to examine the percentage of cases dismissed by year of resolution, rather than year of filing as above. Between 2000 and the first half of 2012, dismissed cases have been between 37% and 55% of the cases resolved. That percentage is 48%-55% in 2009-2012, subject to the same disclaimers about dismissals without prejudice and possible appeals. See Figure 22.

Figure 22. **Status of Cases as Percentage of Federal Filings**  
By Year of Resolution; January 2000 – June 2012



Note: Analysis excludes IPO laddering, merger objection cases, and verdicts. Dismissals may include dismissals without prejudice and dismissals under appeal.

The preceding discussion of case resolutions does not include the resolution of merger objection cases. Merger objection cases usually resolve quickly. Merger objections that are filed as federal securities class actions tend to be voluntarily dismissed relatively often because plaintiffs often elect to participate in the settlement of a parallel action filed in state court. Of the merger objection cases filed as federal securities class actions since the beginning of 2010, 6% settled, 34% were voluntarily dismissed because of the settlement in a parallel state action, 21% were dismissed, and 39% were pending as of June 30, 2012.

## Trends in Settlements

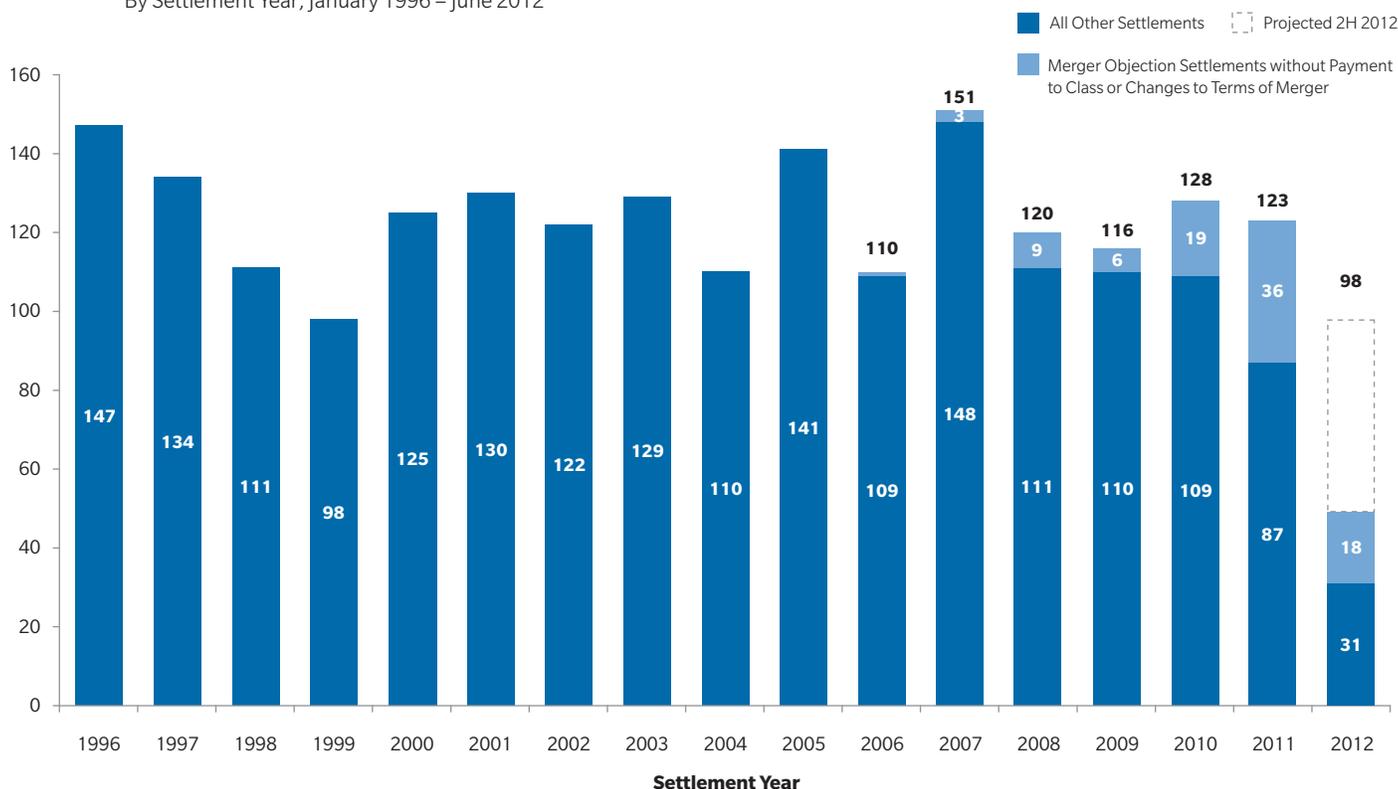
### Number of Settlements<sup>17</sup>

Settlements have been proceeding at an unusually slow pace so far this year. If the current pace continues for the whole year, settlement activity will be at its lowest level since 1999, with only 98 cases settled.

The overall number of settlements did not show a significant slowdown in 2011: there were 123 settlements in 2011, which is in line with the historical average. However, closer examination reveals that settlement activity had already started changing dramatically last year. A large portion of the 2011 settlements involved merger objection cases. Settlements are one more respect in which merger objection cases differ from other securities class actions. Merger objection cases have typically settled only for additional disclosures to investors and fees to plaintiffs' lawyers, with neither monetary compensation to investors nor changes to the terms of merger. Over 2010-2012, 89% of merger objection cases have fallen into this category. If we exclude such merger objection cases, the number of settlements in 2011 was the lowest since the passage of PSLRA in 1995.

In the first six months of 2012, only 31 settlements yielded monetary compensation to investors. If settlements were to continue at this pace for the rest of the year, then by the end of 2012 there would be even fewer such settlements than in 2011, setting a new post-PSLRA low record. See Figure 23.

Figure 23. **Number of Settlements**  
By Settlement Year; January 1996 – June 2012

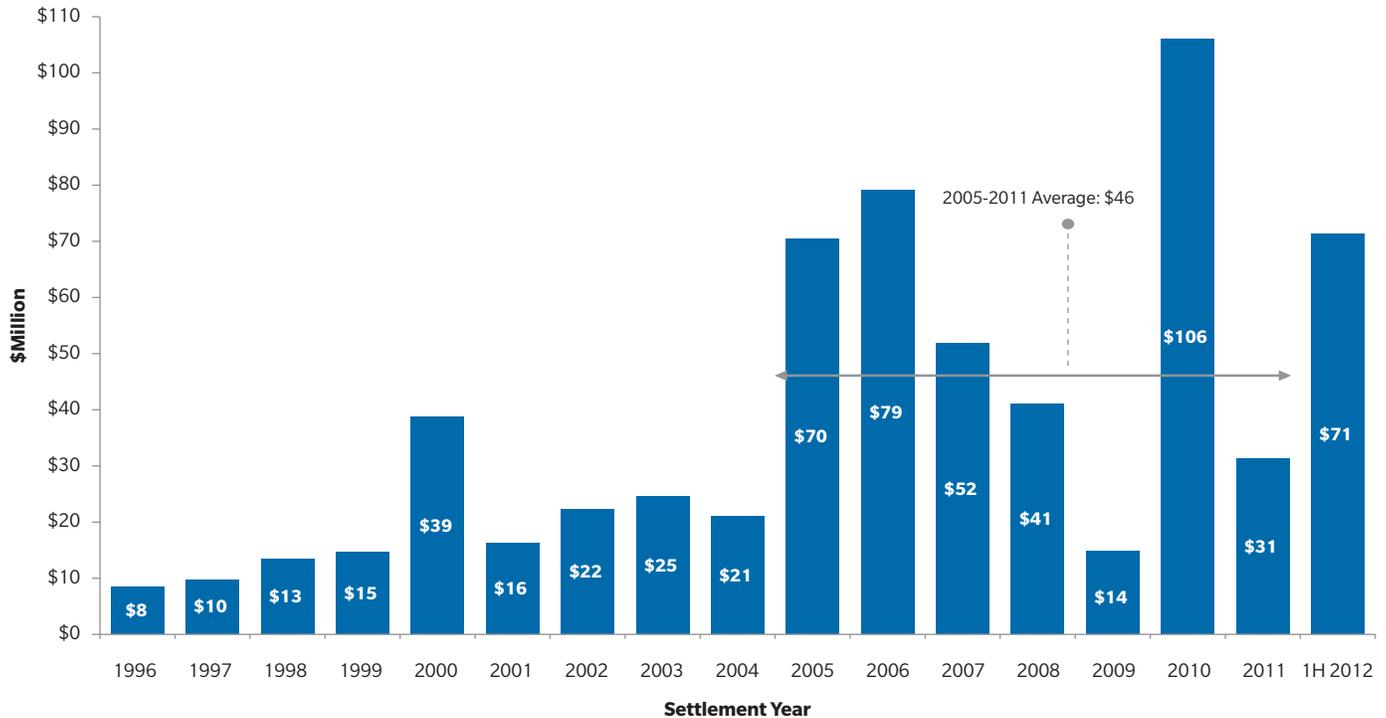


Note: Analysis excludes IPO laddering cases and settlements without details. Merger objection settlements with payment to class or changes to terms of the merger are included in other settlements.

### Settlement Amounts

The average value of a settlement in the first half of 2012 was \$71 million, a sharp rise from the average value of \$46 million over the period 2005-2011.<sup>18</sup> See Figure 24. However, a handful of the very largest settlements often influences the annual average settlement. For the first six months of 2012, the average settlement value has been substantially increased by the \$1.01 billion settlement in *In Re American International Group, Inc. Securities Litigation* (“AIG settlement”). The AIG settlement is composed of four tranches, three of which had been previously approved and the fourth of which was approved this year.

Figure 24. **Average Settlement Value**  
January 1996 – June 2012



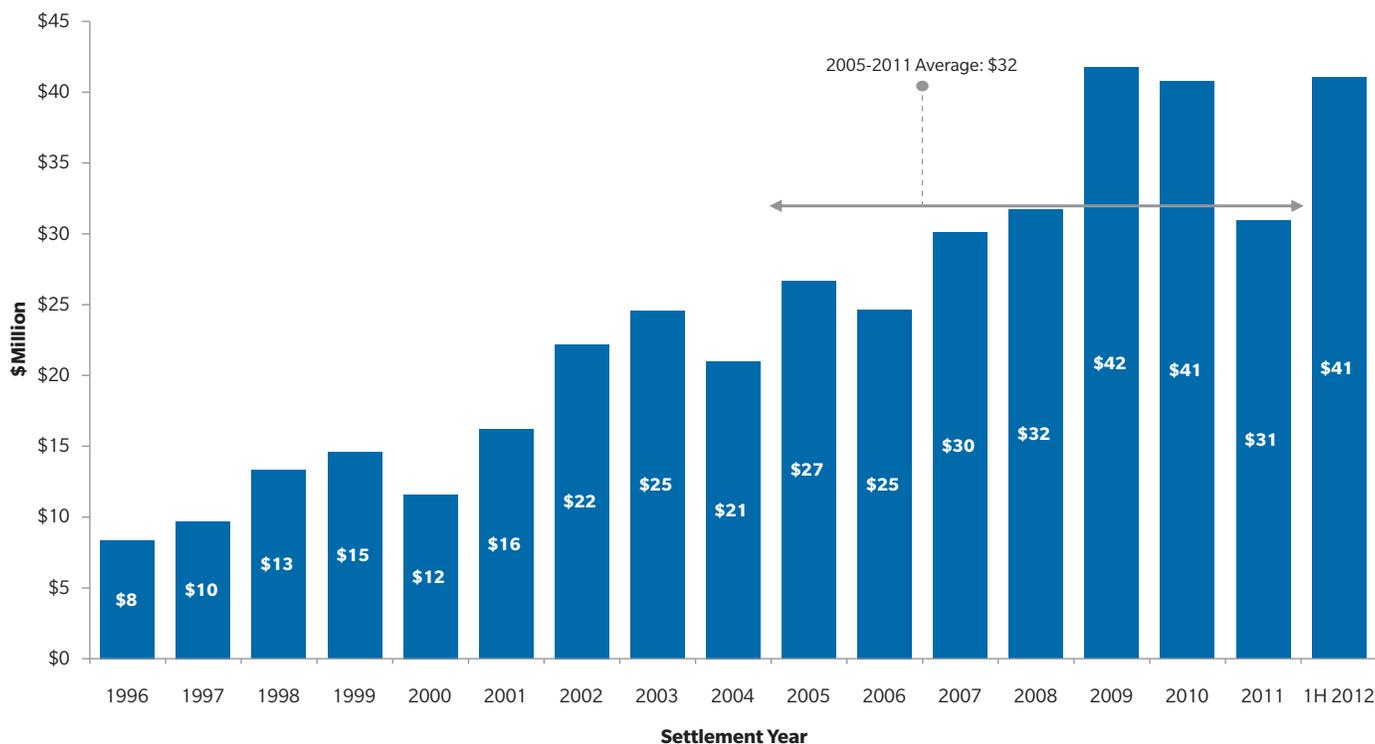
Note: Settlements include 309 IPO laddering cases in 2009. Settlements exclude merger objection cases.

Figure 25 contains average settlements excluding those above \$1 billion and the IPO laddering cases. Under these restrictions (which exclude the AIG settlement), this year’s average settlement amount is \$41 million, rebounding from last year’s \$31 million to levels close to the record levels of 2009 and 2010.

Another way to look at the typical settlement value is to examine median settlements: medians are more robust to extreme observations than are averages.<sup>19</sup> The median settlement amount in the first six months of 2012 was \$7.9 million, approximately the same as in 2011 and consistent with pre-credit crisis levels. See Figure 26.

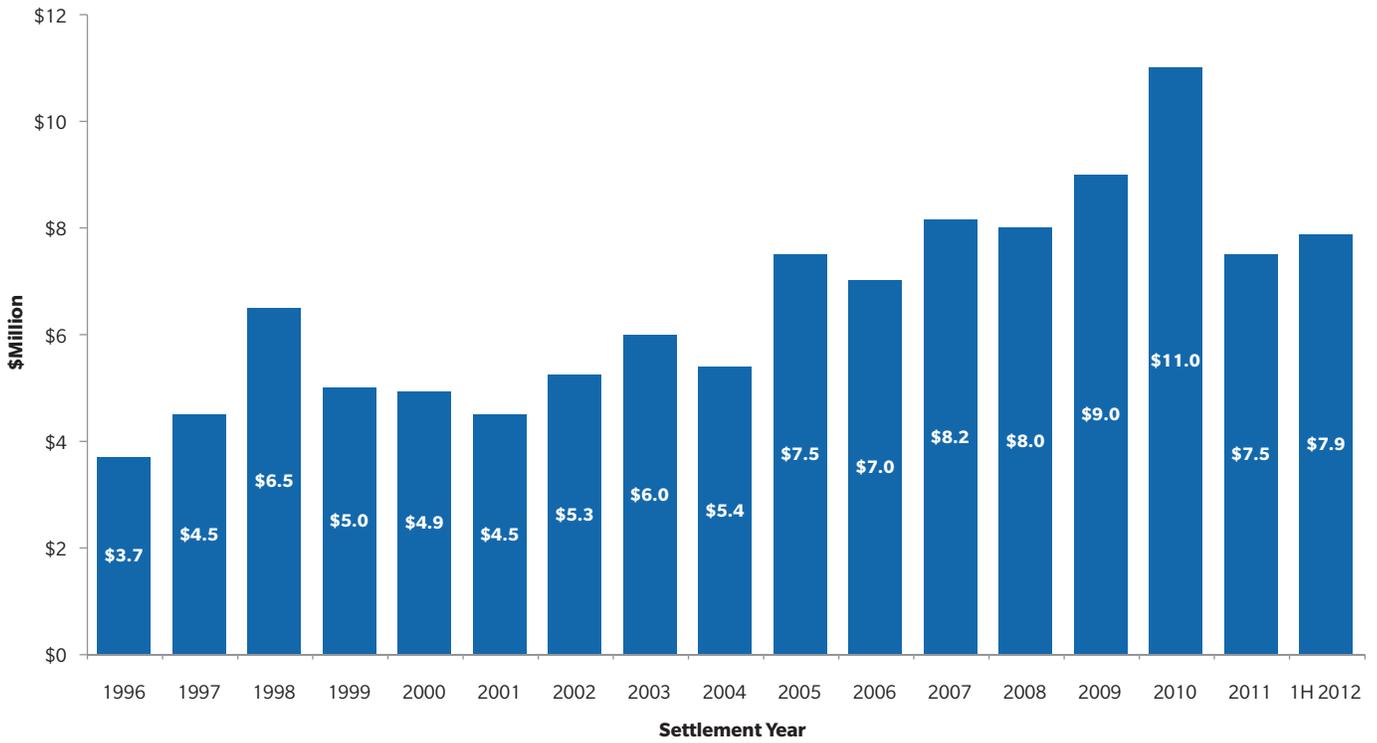
So far this year, there have been four “mega-settlements” over \$100 million—a record high 14% of all settlements. Most settlements, however, are much more modest than the mega-settlements that dominate the news. Of cases that settled in the first half of this year, 52% have settled for less than \$10 million. That percentage is in line with historical observations since at least 2005 (apart from 2010). See Figure 27.

Figure 25. **Average Settlement Value, Excluding Settlements over \$1 Billion**  
January 1996 – June 2012



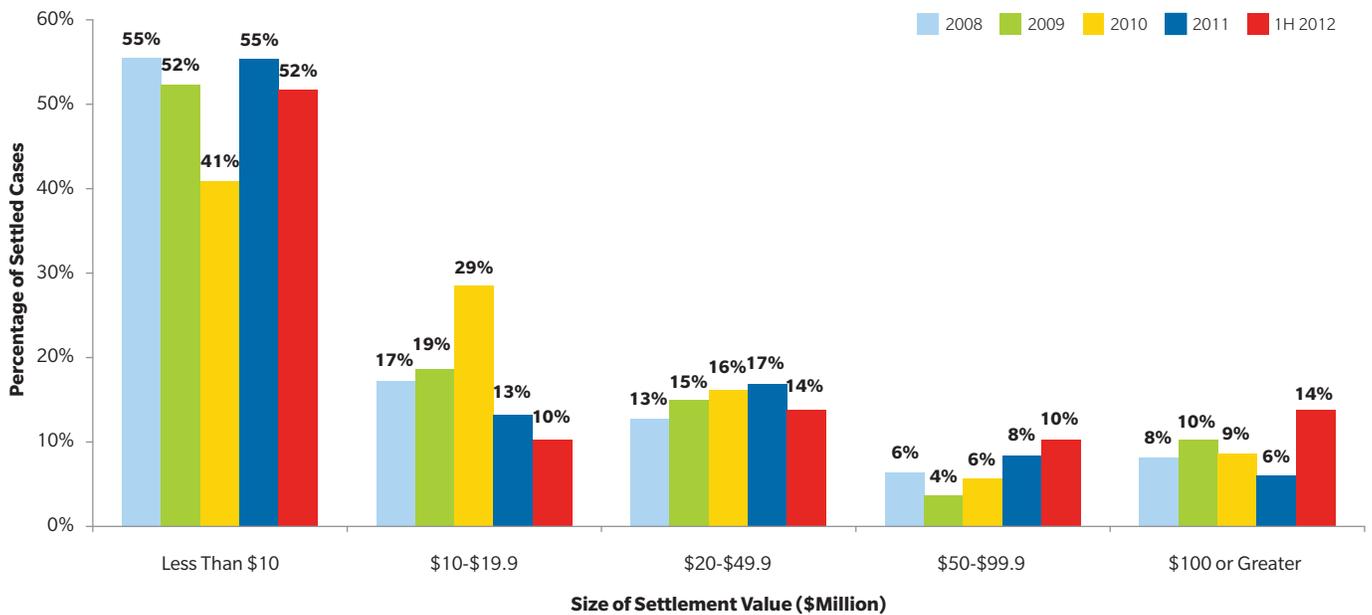
Note: Settlements exclude IPO laddering and merger objection cases. For list of excluded settlements over \$1 billion see Table 1.

Figure 26. **Median Settlement Value**  
January 1996 – June 2012



Note: Settlements exclude IPO laddering and merger objection cases.

Figure 27. **Distribution of Settlement Values**  
January 2008 – June 2012



Note: Settlements exclude IPO laddering and merger objection cases.

Table 1 presents the top 10 securities class action settlements of all time. The AIG settlement already appeared on our list last year, but reached final approval this year with the approval of the fourth tranche. The AIG settlement is one of only two settlements on the list after 2008; the other is Enron, which only completely settled in 2010, though both cases are based on much older events.

Table 1. **Top 10 Securities Class Action Settlements (As of June 30, 2012)**

Ranking	Company	Settlement Year	Total Settlement Year Value (\$MM)	Settlements with Co-Defendants, if Any, that Were			
				Financial Institutions		Accounting Firms	
				Value (\$MM)	Percent	Value (\$MM)	Percent
1	Enron Corp. <sup>1</sup>	2010	\$7,242	\$6,903	95%	\$73	1%
2	WorldCom, Inc. <sup>2</sup>	2005	\$6,158	\$6,004	98%	\$65	1%
3	Cendant Corp. <sup>3</sup>	2000	\$3,692	\$342	9%	\$467	13%
4	Tyco International, Ltd.	2007	\$3,200	\$0	0%	\$225	7%
5	AOL Time Warner Inc.	2006	\$2,650	\$0	0%	\$100	4%
6	Nortel Networks (I)	2006	\$1,143	\$0	0%	\$0	0%
7	Royal Ahold, NV	2006	\$1,100	\$0	0%	\$0	0%
8	Nortel Networks (II)	2006	\$1,074	\$0	0%	\$0	0%
9	McKesson HBOC Inc.	2008	\$1,043	\$10	1%	\$73	7%
10	American International Group, Inc.	2012	\$1,010	\$0	0%	\$98	10%
<b>Total</b>			<b>\$28,311</b>	<b>\$13,259</b>	<b>47%</b>	<b>\$1,099</b>	<b>4%</b>

Notes: For this summary table only, tentative and partial settlements are included for comparison, and "Settlement Year" in this table represents the year in which the last settlement—whether partial or final—had the first fairness hearing. For partial tentative settlements "Settlement Year" is the year in which this settlement was announced.

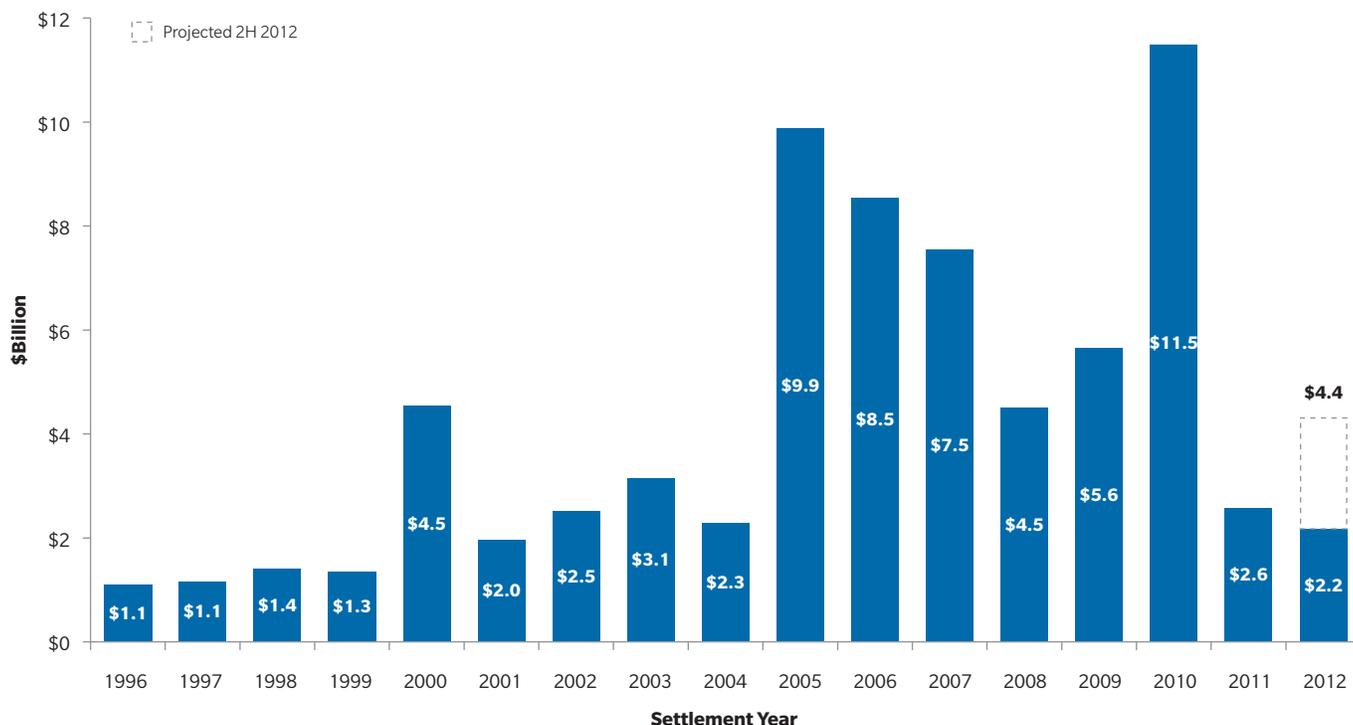
<sup>1</sup> The fairness hearing for the last tentative partial settlement, with Goldman Sachs, was held on February 4, 2010.

<sup>2</sup> The settlement value incorporates a \$1.6 million settlement in the MCI WorldCom TARGETS case.

<sup>3</sup> The settlement value incorporates a \$374 million settlement amount in the Cendant PRIDES I and PRIDES II cases. Settlement in the Cendant PRIDES I case was a non-cash settlement valued at \$341.5 million. The settlement value also incorporates 50% of December 29, 2007 separate settlement of claims of Cendant and certain former HFS officers against E&Y. Under the terms of the Cendant Settlement, the Class is entitled to 50% of Cendant's net recovery from E&Y. The additional recovery to the class is \$131,750,000.

The aggregate amount of settlements approved in the first six months of this year exceeds \$2 billion. See Figure 28. This amount includes just over \$1 billion for the AIG settlement. If settlements were to continue at the current pace for the rest of the year, aggregate settlements by year end would be substantially higher than last year. This result, though, is largely driven by the AIG settlement; if we exclude AIG and extrapolate only the other settlements to the end of the year, then by year end the aggregate settlements could be as low as last year. In large part, the low aggregate settlement value to date this year reflects the small number of settlements as documented at the beginning of this section.

Figure 28. **Aggregate Settlement Value**  
By Settlement Year; January 1996 – June 2012



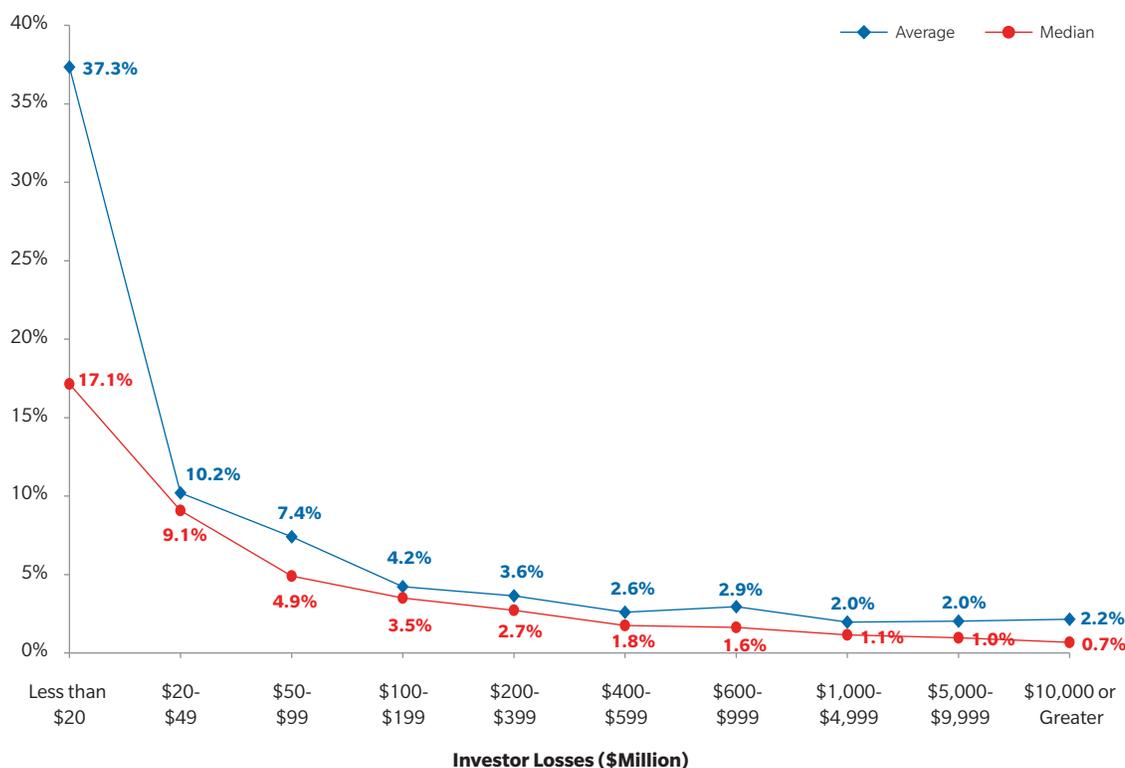
Note: Settlements exclude Merger Objection cases. Excluding the 2010 Enron settlement, aggregate settlement value for that year was \$4.3 billion.

## Investor Losses versus Settlements

Historically, “investor losses” have been a powerful predictor of settlement size. As noted above, NERA’s investor losses variable is a proxy for the aggregate amount that investors lost from buying the defendant’s stock rather than investing in the broader market during the alleged class period. Investor losses can explain more than half of the variance in the settlement values in our database.<sup>20</sup>

In general, settlement sizes grow as investor losses grow, but the relationship is not linear. In particular, settlement size tends to rise less than proportionately, so small cases typically settle for a higher fraction of investor losses (i.e., more cents on the dollar) than larger cases. For example, cases with investor losses below \$20 million on average settle for 37.3% of investor losses, while cases with investor losses over \$10 billion settle for an average of 2.2% percent of investor losses. See Figure 29.

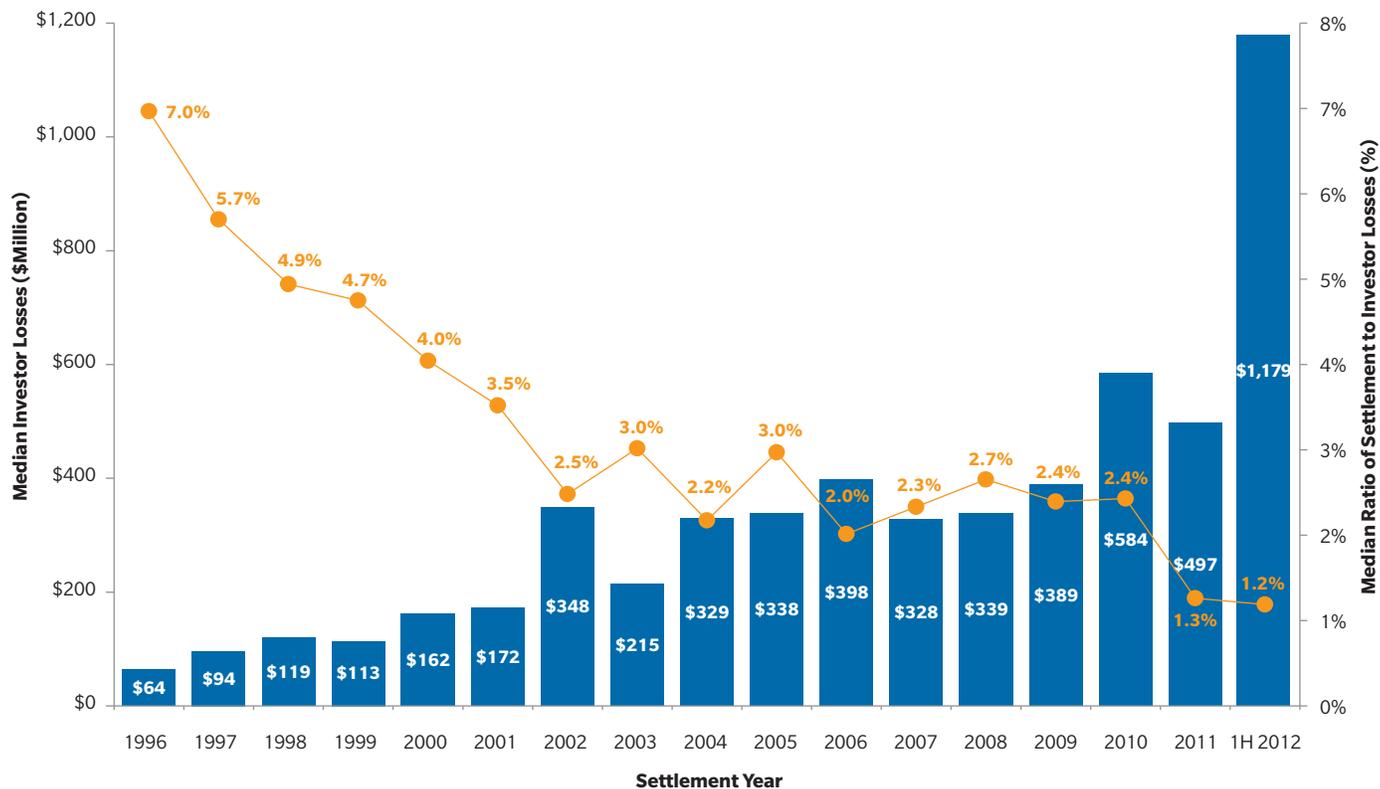
Figure 29. **Settlement Value as a Percentage of Investor Losses**  
By Level of Investor Losses; January 1996 – June 2012



Note that the investor losses variable is not a measure of damages since any stock that underperforms the S&P 500 would have “investor losses” over the period of underperformance; rather it is a rough proxy for the relative size of investors’ potential claims. Thus, our findings on the ratio of settlement to investor losses should not be interpreted as the share of damages recovered in settlement but rather as the recovery compared to a rough measure of the “size” of the case.

Median investor losses for settled cases have been steadily increasing since the passage of the PSLRA, from \$64 million for settlements in 1996 to \$497 million in 2011. They appear to have skyrocketed in the first half of 2012, exceeding \$1 billion. However, this figure is based on a relatively small number of settlements and as such may not represent a trend that will continue for the rest of the year. The median ratio of settlement to investor losses has reached a new post-PSLRA low at 1.2%, but that is unsurprising given that investor losses are high and (as explained above) settlements typically grow less than proportionally to investor losses. See Figure 30.

Figure 30. **Median Investor Losses and Median Ratio of Settlement to Investor Losses**  
By Settlement Year; January 1996 – June 2012

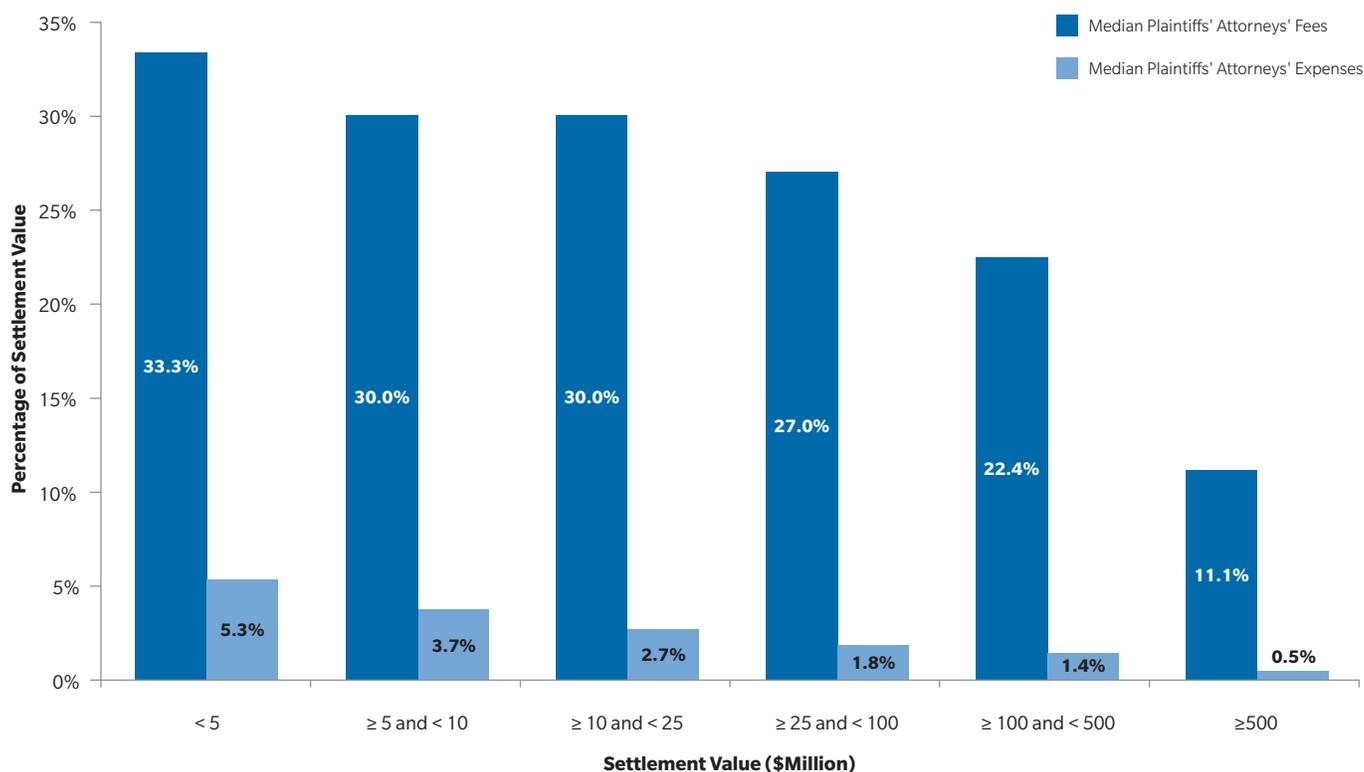


Note: Settlements exclude IPO laddering and merger objection cases.

### Plaintiffs' Attorneys' Fees and Expenses

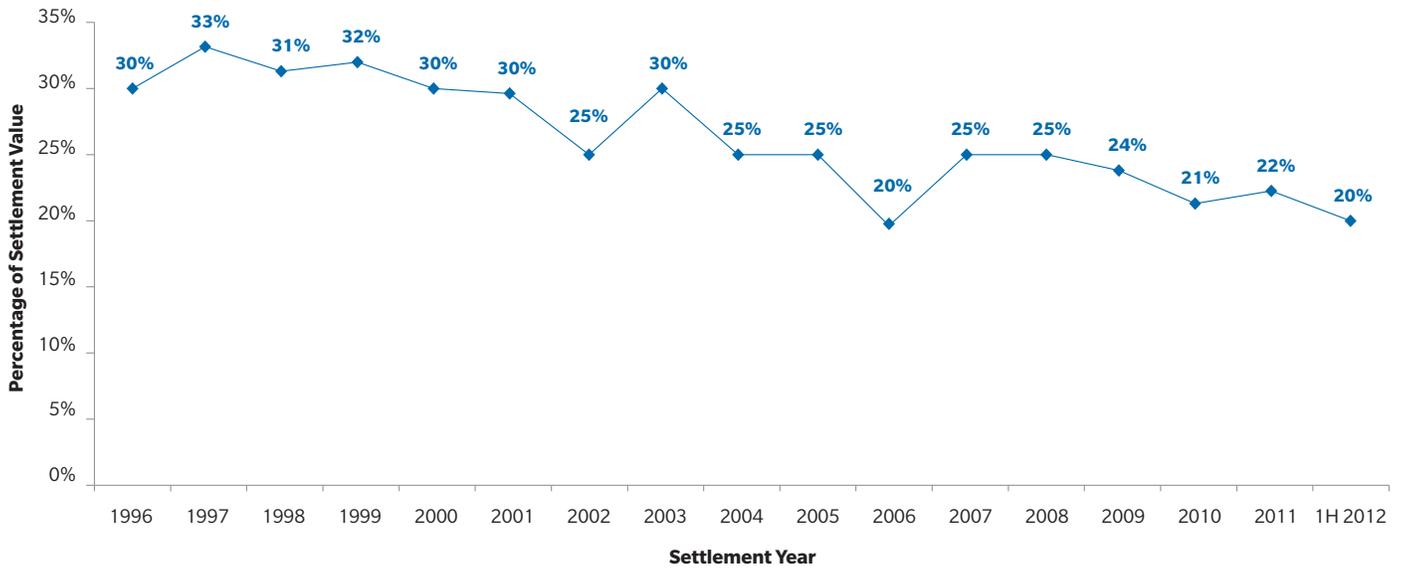
The settlement values that we report include plaintiffs' attorneys' fees and expenses in addition to the amounts ultimately paid to the class. In Figure 31, fees and expenses as a proportion of settlement value for settlements finalized from 1996 through June 2012, excluding merger objection cases, are shown. Typically, the proportion of a settlement taken by fees and expenses declines as the settlement size rises. For settlements below \$5 million, for example, median plaintiffs' attorneys' fees are 33% of the settlement amount; while for settlements of over \$500 million, median fees fall to 11%. Median plaintiff expense ratios fall over this settlement value range as well, as seen in Figure 31.

Figure 31. **Median Plaintiffs' Attorneys' Fees and Expenses, by Size of Settlement**  
January 1996 – June 2012



We have also analyzed trends in plaintiffs' attorneys' fees over time. Median fees for all settlements other than merger objections cases during the first half of this year have represented 20% of the settlement value—a small decrease since last year. See Figure 32. The general downward time trend in the fee percentage is explained, at least in part, by the fact that cases have been getting bigger over time, and that, as documented above, bigger cases typically have lower fee percentages.

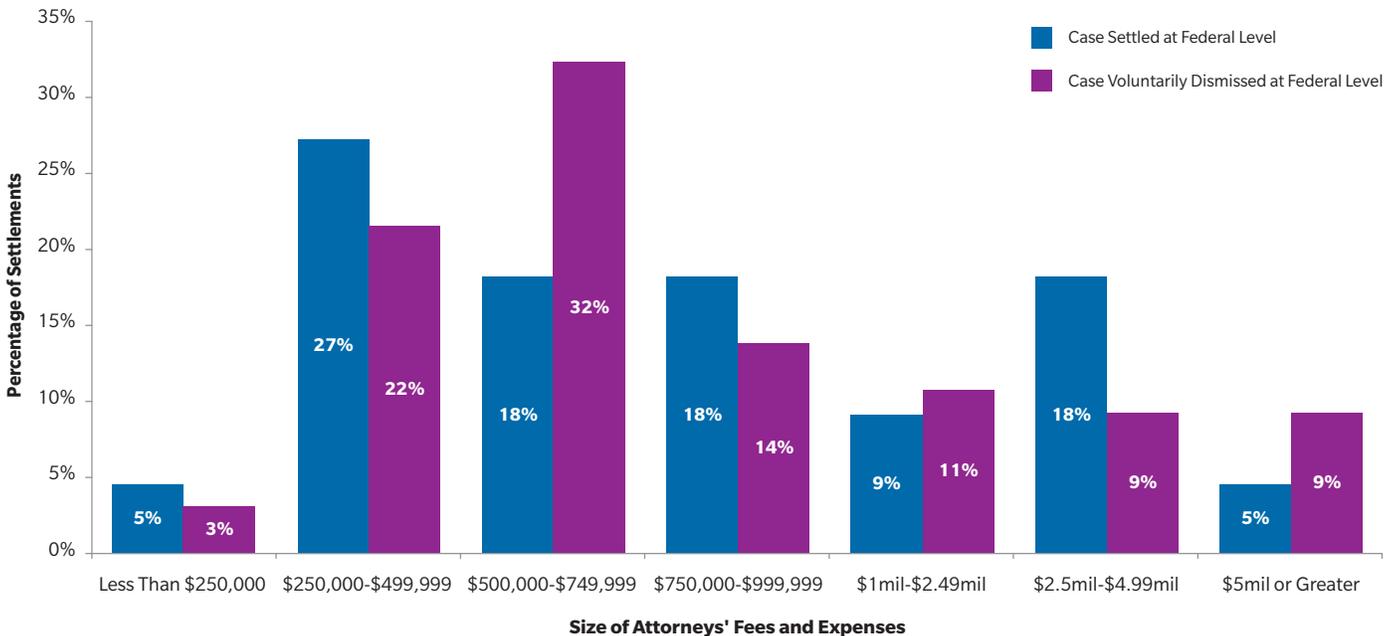
Figure 32. **Median Plaintiffs' Attorneys' Fees, by Year**  
 For Settlement Values Greater Than or Equal to \$25M; January 1996 – June 2012



Note: Analysis excludes merger objection cases.

We report the fees for merger objection cases separately. For the merger objection cases that settled at the federal level since 2005 with no payment to investors, plaintiffs' attorneys' fees have been below \$1 million in 68% of the cases. See Figure 33. For the merger objection cases that were voluntarily dismissed because a parallel state action settled, plaintiffs' attorneys' fees in the parallel state action have been below \$1 million in 71% of the cases.

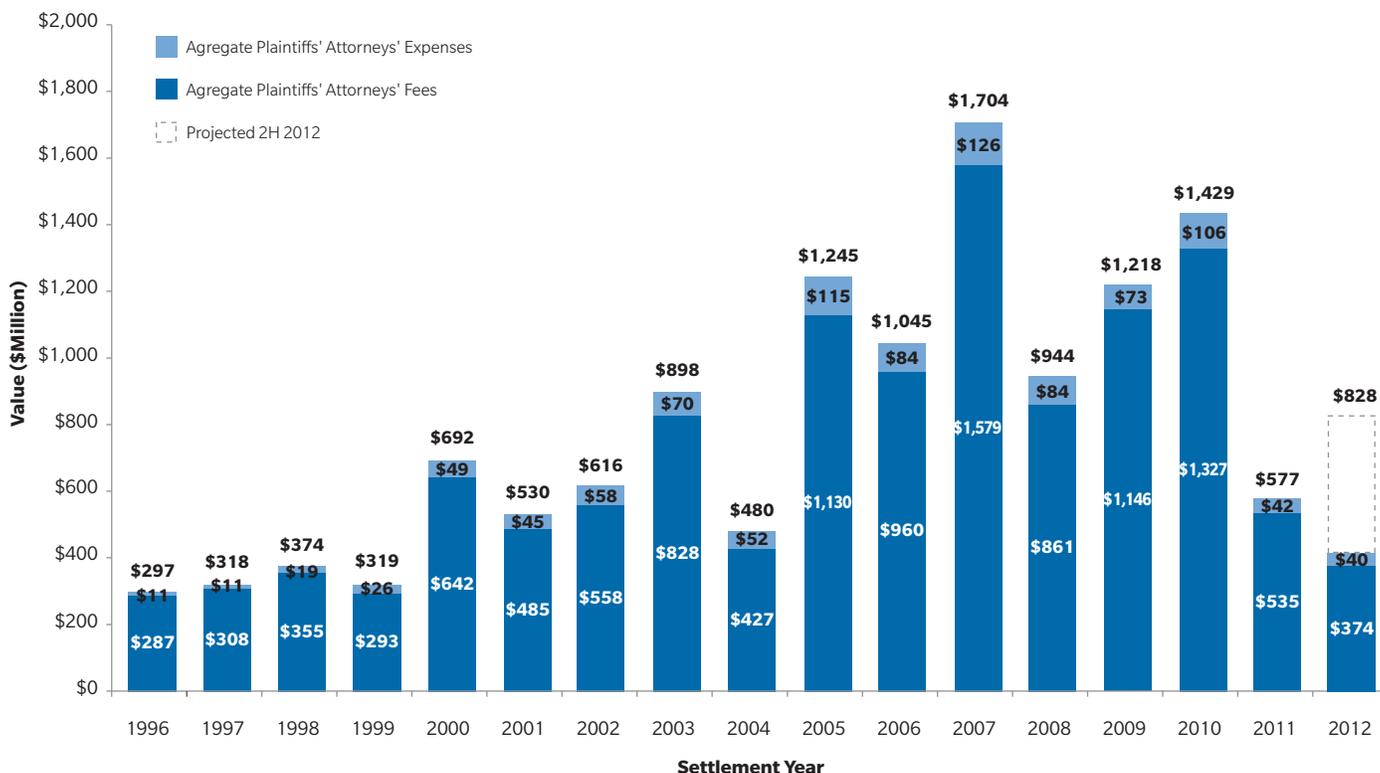
Figure 33. **Distribution of Plaintiffs' Attorneys' Fees and Expenses in Merger Objection Settlements**  
 With No Payment to Investors; January 2005 – June 2012



Note: Cases filed and settled January 2005 - June 2012. For merger objections voluntarily dismissed at federal level, attorneys' fees and expenses refer to the settlement in the parallel state merger objection case, when such settlement exists.

Aggregate plaintiffs’ attorneys’ fees and expenses for all federal settlements have been \$414 million in the first six months of this year. See Figure 34. If fees and expenses were to continue at this pace, they would be noticeably higher than last year, but still the second lowest since 2004. Fees and expenses for the first six months of this year include \$143 million for the AIG settlement. If the AIG fees and expenses are excluded, and if the remainder were to continue at the same pace for the rest of the year, aggregate fees and expenses for 2012 would end up being similar to the aggregate level for 2011.

Figure 34. **Aggregate Plaintiffs' Attorneys' Fees and Expenses**  
January 1996 – June 2012



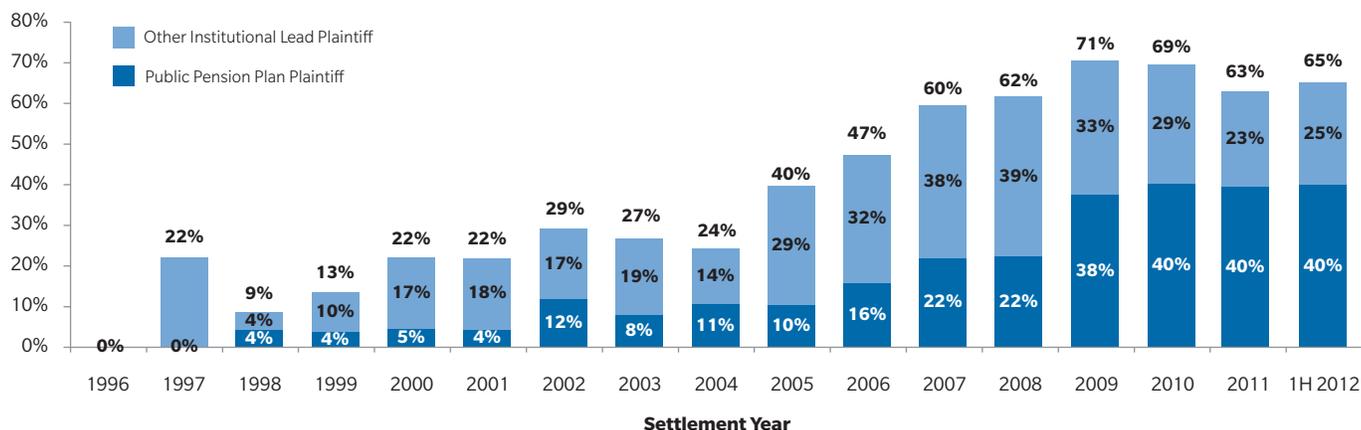
These fees are calculated for federal securities class actions only. As such, they do not include fees and expenses for merger objection cases filed in state court or as derivative actions, which may be lucrative for plaintiffs’ law firms. One example is *In Re Southern Peru Copper*, a case in Delaware Chancery Court that yielded a well-publicized award of \$285 million to plaintiffs’ attorneys.

### Characteristics of Settled Cases

One of the policy goals of the PSLRA was to increase the participation of institutions as lead plaintiffs in securities class actions, and in that respect it has been a success. The proportion of settled cases with an institutional lead plaintiff rose sharply between 1996 and 2010, as did the fraction of such settlements in which the institutional lead plaintiff was a public pension plan, *peaking* at 71% and 40%, respectively. The trend of increasing institutional participation appears to have leveled off in the last two or three years. The fraction of lead plaintiffs that are public pension plans has remained at or near 40% since 2009. During the first half of 2012, the total fraction of institutional lead plaintiffs has been 65%—a little below the 2009 and 2010 levels. See Figure 35.

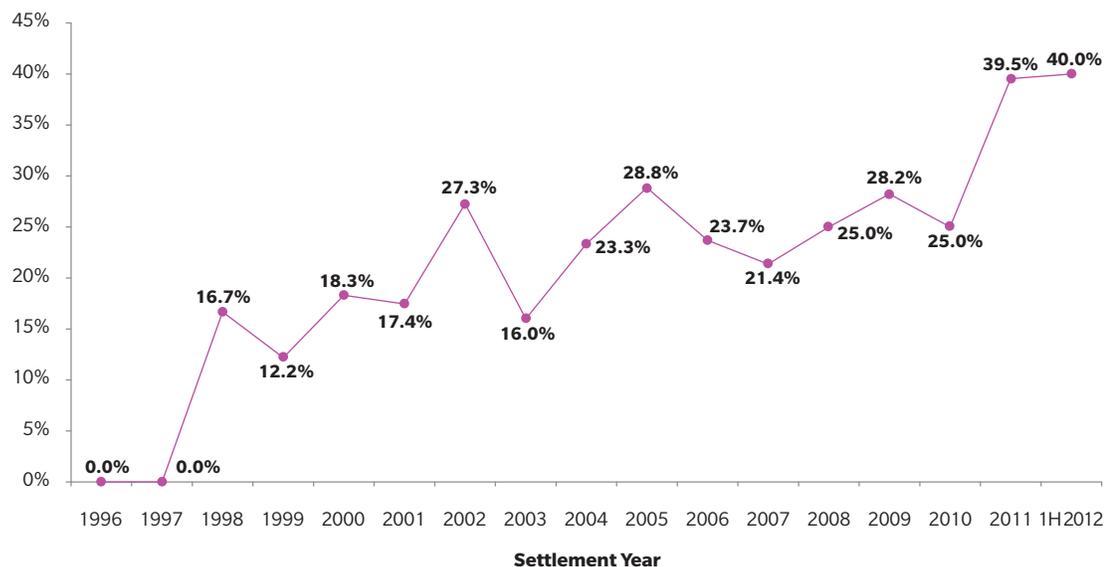
NERA’s research on factors explaining the amounts for which cases have settled historically finds that, on average, institutional lead plaintiff participation is associated with larger settlements.

Figure 35. **Percentage of Settlements with an Institutional Lead Plaintiff**  
Cases Filed and Settled; January 1996 – June 2012



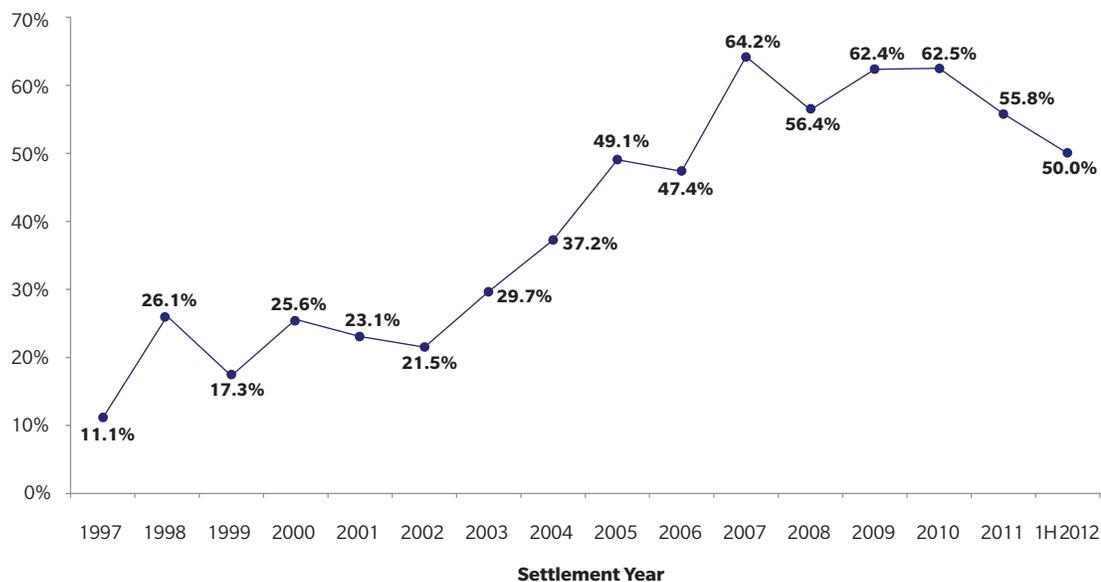
A “blow-up” provision typically permits a settlement to be invalidated if more than a certain proportion of the class opts out. These provisions have become an increasingly common feature of settlement agreements in recent years. In 2012, the proportion of settlements with such provisions increased to 40% of all settlements, continuing an upward trend. See Figure 36.

Figure 36. **Percentage of Settlements with a "Blow-Up" Provision (Settlements with Available Settlement Notice)**  
Cases Filed and Settled; January 1996 – June 2012



"Tag-along" derivative actions associated with securities class actions have been proliferating over the last ten years. Over the period 2007-2010, more than 60% of securities class actions had parallel derivative suits. This year and last, the trend toward such derivative actions appears to have reversed. In 2012, the proportion of cases with a parallel derivative action (among those that settled) has declined to 50%. See Figure 37.

Figure 37. **Percentage of Settled Cases with a Parallel Derivative Action**  
Cases Filed and Settled; January 1996 – June 2012



Note: We excluded cases filed and settled in 1996 because there was only one case and it had a derivative action.

## Trials

Few securities class actions proceed to trial, though those that do tend to attract a great deal of attention. Fewer still get all the way to a verdict. So it is not surprising that there have been no trials or verdicts so far in 2012 that we know of. Since the passage of the PSLRA in late 1995, there have been only 30 securities class action trials, as compared to a total of over 3,909 filings. Figure 38 summarized the status of cases that have gone to trial and Table 2 provides details.

Figure 38. **Status of 30 Securities Class Actions That Went to Trial After PSLRA**  
As of June 30, 2012

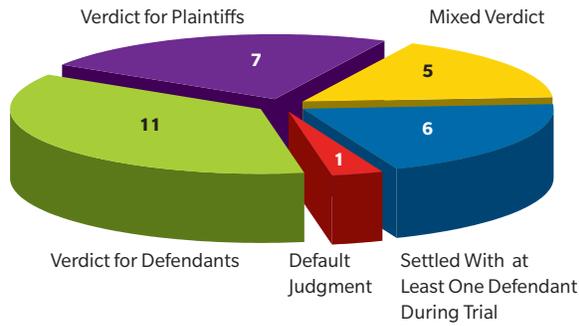


Table 2. **Thirty Securities Class Actions That Went to Trial after PSLRA**

<b>Case (1)</b>	<b>Federal Circuit (2)</b>	<b>File Year (3)</b>	<b>Trial Year<sup>1</sup> (4)</b>
<b>I. Verdict for Defendants (11)</b>			
1 American Mutual Funds (Fee Litigation) <sup>2</sup>	9	2004	2009
2 American Pacific Corp. <sup>3</sup>	9	1993	1997
3 BankAtlantic Bancorp, Inc. <sup>4</sup>	11	2007	2011
4 Biogen Inc.	1	1994	1998
5 Everex Systems Inc. <sup>5</sup>	9	1992	2002
6 Garment Capitol Associates	2	1996	2000
7 Health Management, Inc.	2	1996	1999
8 JDS Uniphase Corp.	9	2002	2007
9 NAI Technologies, Inc.	2	1994	1996
10 Thane International, Inc. <sup>6</sup>	9	2003	2009
11 Tricord Systems, Inc.	8	1994	1997
<b>II. Verdict for Plaintiffs (7)</b>			
1 Apollo Group, Inc. <sup>7</sup>	9	2004	2010
2 Claghorn / Scorpion Technologies, Inc.	9	1998	2002
3 Computer Associates International, Inc.	2	1991	2000
4 Helionetics, Inc.	9	1994	2000
5 Homestore.com, Inc. <sup>8</sup>	9	2001	2011
6 Real Estate Associates, LP	9	1998	2002
7 U.S. Banknote Corp. <sup>9</sup>	2	1994	1997
<b>III. Mixed Verdict (5)</b>			
1 Clarent Corp. <sup>10</sup>	9	2001	2005
2 Digitran Systems, Inc. <sup>11</sup>	10	1993	1996
3 ICN Pharmaceuticals, Inc. <sup>12</sup>	2	1987	1996
4 Household International, Inc. <sup>13</sup>	7	2002	2009
5 Vivendi Universal, S.A. <sup>14</sup>	2	2002	2010
<b>IV. Settled During Trial<sup>15</sup> (6)</b>			
1 AT&T	3	2000	2004
2 First Union National Bank / First Union Securities / Cypres Funds	11	2000	2003
3 Globalstar Telecommunications, Ltd.	2	2001	2005
4 Heartland High-Yield / Short Duration High Yield Municipal Bond Funds	7	2000	2005
5 WorldCom	2	2002	2005
6 Safety-Kleen Corp. (Bondholders Litigation) <sup>16</sup>	4	2000	2005
<b>V. Default Judgment (1)</b>			
1 Equisure Inc. <sup>17</sup>	8	1997	1998

Notes: Until otherwise noted, all these cases went to a jury trial. Data are from case dockets. Cases within each group presented in alphabetical order.

**Table 2 Notes Continued:**

- <sup>1</sup> Trial Year shows the year in which the trial began or, when there are relevant post-trial developments (such as a ruling on an appeal or a re-trial), the most recent such development.
- <sup>2</sup> Judgment for defendants entered 12/28/09 after a 7/28/09-8/7/09 bench trial.
- <sup>3</sup> On 11/27/95 the US District Court granted in part the Company's motion for summary judgment ruling that the Company had not violated the federal securities laws in relation to disclosure concerning the Company's agreements with Thiokol. The remaining claims, which related to allegedly misleading or inadequate disclosures regarding Halotron, were the subject of a jury trial that began in December 1995 and ended on 1/17/96. The jury reached a unanimous verdict that neither the Company nor its directors and officers made misleading or inadequate statements regarding Halotron. Verdict was appealed, but on 6/5/97 affirmed by the 9th Circuit Court of Appeals.
- <sup>4</sup> On 11/18/10 the jury returned a verdict in the plaintiffs' favor, finding seven of the statements to have been false, and awarding damages of \$2.41 per share. On 4/25/11 the jury verdict was set aside by the court in a post-trial ruling. Judge opinion granted the defendants' motion for judgment as a matter of law and indicated that she will enter judgment in defendants' favor following remaining procedural issues.
- <sup>5</sup> 1998 verdict for defendants was reversed and remanded by the 9th Circuit Court of Appeals; 2002 retrial again yielded a verdict for defendants.
- <sup>6</sup> On 6/10/05 bench trial verdict dismissed the case. Thereafter, plaintiffs filed a notice of appeal from the trial verdict in favor of the defendants. On 11/26/07, the US Court of Appeals of the 9th Circuit issued an Opinion reversing and remanding the action back to District Court with instructions to enter judgment in favor of the plaintiffs, to address loss causation, and to conduct further proceedings consistent with this opinion. On 12/5/08 the defendants filed a Motion for Judgment On Loss Causation and a Motion for Judgment On Lack Of Control Person Liability And Good Faith Defenses. On 3/17/09, the Court granted the defendants' Motion for Judgment On Loss Causation but denied the Motion for Judgment On Lack Of Control Person Liability And Good Faith Defenses. Final Judgment on behalf of the defendants was entered on 3/25/09.
- <sup>7</sup> On 1/16/08 a federal jury found Apollo Group Inc. and certain former officers liable for securities fraud and ordered them to pay approximately \$280 million to shareholders. On 8/8/08 the District Court overturned the jury verdict; Federal Judge James A. Teilborg's order vacated the judgment and entered judgment in defendants' favor. Following the dismissal, a notice of appeal was filed on 8/29/08. On 6/23/10 the United States Court of Appeals for the 9th Circuit reversed the District Court's post-trial ruling and remanded the case with instructions that the District Court enter judgment in accordance with the jury's verdict.
- <sup>8</sup> On 1/25/11, a civil jury trial commenced against the sole remaining defendant in the case – Stuart H. Wolff, the company's former Chairman and CEO. On 2/24/11 a Central District of California rendered a verdict on behalf of plaintiffs. The jury found that the defendant, Stuart H. Wolff, had violated the federal securities laws in connection with a series of statements the company made in 2001. All other defendants had previously settled or been dismissed.
- <sup>9</sup> Judge subsequently vacated the jury verdict and approved a settlement.
- <sup>10</sup> Chairman of Clarent liable; Ernst & Young not liable.
- <sup>11</sup> A 9/30/96-10/24/96 jury trial resulted in a mixed verdict, with liability for Digitran Systems, Inc. and its former president, but not liable verdict for other individual defendants and the auditor, Grant Thornton.
- <sup>12</sup> Hung jury.
- <sup>13</sup> The jury found in favor of the defendants with respect to 23 of the alleged misstatements, but in favor of the plaintiffs with respect to 17 other statements.
- <sup>14</sup> The trial started 10/5/09. On 1/29/10 the jury returned a verdict against the company on all 57 of the plaintiffs' claims. However, the jury also found that the two individual defendants, (former CEO Jean-Marie Messier and former CFO Guillaume Hannezo) were not liable.
- <sup>15</sup> At least one defendant settled after the trial began, but prior to judgment.
- <sup>16</sup> Some director-defendants settled during the trial. Default judgment against CEO and CFO who failed to show up for trial.
- <sup>17</sup> Default judgment against Equisure Inc. which failed to show up for trial.

## Notes

- 1 This edition of NERA's research on recent trends in shareholder class action litigation expands on previous work by our colleagues Lucy Allen, Elaine Buckberg, Frederick C. Dunbar, Todd Foster, Vinita M. Juneja, Denise Neumann Martin, Jordan Milev, Robert Patton, Stephanie Plancich, and David I. Tabak. We gratefully acknowledge their contribution to previous editions as well as this current version. The authors also thank Lucy Allen for helpful comments on this version. In addition, we thank Carlos Soto, Nicole Roman, and other researchers in NERA's Securities and Finance Practice for their valuable assistance with this paper. These individuals receive credit for improving this paper; all errors and omissions are ours. Data for this report are collected from multiple sources, including complaints, case dockets, RiskMetrics Group/Securities Class Action Services (SCAS), Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., SEC filings, and the public press.
- 2 NERA tracks class actions filed in federal court and involving alleged violations of the federal securities laws. If multiple such actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, multiple actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect that consolidation. Therefore, our count for a particular year may change over time. Different assumptions for consolidating filings would likely lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings.
- 3 This average excludes the IPO laddering cases.
- 4 We have classified cases as credit crisis-related based on the allegations in the complaint. The category includes cases with allegations related to subprime mortgages, mortgage-backed securities, and auction rate securities, as well as some other cases alleged to involve the credit crisis. Our categorization is intended to provide a useful picture of trends in litigation but is not based on detailed analysis of any particular case.
- 5 This figure refers to deals announced between 2010 and 2011 for \$100 million or more, completed by February 29, 2012, with a US public company as target, and challenged by December 31, 2011. Data from a proprietary NERA database.
- 6 The merger objection cases form the largest group of federal securities class actions not involving such alleged violations.
- 7 We do not compute investor losses for all cases included in this publication. For instance, class actions in which buyers of common stock are not alleged to have been damaged are not included.
- 8 Our normal approach to geographical classification is to use the country of domicile for the issuing company. Many of the defendant Chinese companies, however, obtained their US listing through a reverse merger and, consequently, report a US domicile. For this reason, we have also tracked companies with their principal executive offices in China.
- 9 Approximately 63% of the Chinese companies targeted by a securities class action in the period 2010-2012 were listed in the US through reverse mergers.
- 10 See, for example, Xueqing Linda Ji and Hunter Qiu, "Weighing Reverse Mergers for Private Chinese Cos," *Law360*, June 25, 2012.
- 11 See, for example, Gwyn Quillen and Amy June, "Clarifying Accountants' Secondary Liability," *Law360*, August 8, 2011.
- 12 In earlier editions of NERA's "Recent Trends in Securities Class Action Litigation," we displayed this information differently. The percentage corresponding to each category is now computed as the number of complaints making an allegation in that category as a percentage of the total number of complaints filed; in earlier editions, it was computed as a percentage of the total number of allegations in any category. In other words, we have changed the denominator from total number of allegations to total number of cases. The change in methodology can lead to different results because complaints often make multiple allegations.
- 13 We have updated this analysis so that the fraction is computed only over cases alleging violation of Rule 10b-5.
- 14 Cases for which investor losses cannot be calculated are excluded. The largest excluded groups are the IPO laddering cases and the merger objection cases.
- 15 Thus, it is not that only 10% of cases are dismissed; it is that 10% of settled cases in which a motion to dismiss had been filed, had been dismissed at the time of settlement.
- 16 The dismissed category includes several outcomes: cases with granted motion to dismiss granted, denied motion for class certification, granted motion for summary judgment filed by defendant, and cases that were voluntarily dismissed. Motions to dismiss that are only partially granted are not included in the dismissed category.
- 17 Unless otherwise noted, tentative settlements (those yet to receive court approval) and partial settlements (those covering some but not all non-dismissed defendants) are not included in our settlement statistics. We define "Settlement Year" as the year of the first court hearing related to the fairness of the entire settlement or the last partial settlement.
- 18 Because merger objection cases typically settle for no monetary compensation to investors, we exclude all merger objection settlements from the analysis of settlement values.
- 19 The median settlement value for a year is the level that half of all settlements that year exceeded and half fell below.
- 20 Technically, the investor losses variable explains more than half of the variance in the logarithm of settlement size. Investor losses over the class period are measured relative to the S&P 500, using a proportional decay trading model to estimate the number of affected shares of common stock. We measure investor losses only if the proposed class period is at least two days. Our sample includes more than 1,000 post-PSLRA settlements.

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# **EXHIBIT 11**

Joint Reply Declaration Exhibit 11

Lodestar/Multiplier and Fee Percentages in PSLRA Settlements \$400 million and Above

The cases highlighted in blue are discussed in the Miller declaration ¶ 58 (\$550 - \$800 million) and in the Coffee declaration ¶ 17 (\$490 - \$690 million)

No.	Order	Total Settlement Amount	Fee Awarded	Fee Percentage Awarded (as percentage of the Gross Settlement Amount)	Lodestar Multiplier	Passed motion to dismiss stage prior to settlement?
1	<i>In re Enron Corp. Sec., Deriv. &amp; ERISA Litig.</i> , 586 F. Supp. 2d 732 (S.D. Tex. 2008)	\$ 7,227,390,000	\$ 688,239,000	9.52%	5.22	✓
2	<i>In re WorldCom, Inc. Sec. Litig.</i> , 388 F. Supp. 2d 319 (S.D.N.Y. 2005)	\$ 6,156,100,670	\$ 336,100,000	5.46%	2.50	✓
3	<i>In re Tyco Int'l Ltd. Multidistrict Litig.</i> , 535 F. Supp. 2d 249 (D.N.H. 2007)	\$ 3,200,000,000	\$ 464,000,000	14.50%	2.70	✓
4	<i>In re Cendant Corp. Sec. Litig.</i> , 109 F. Supp. 2d 285 (D.N.J. 2000)	\$ 3,186,500,000	\$ 262,468,857	8.24%	32.81	✓
5	<i>In re AOL Time Warner Inc. Sec. Litig.</i> , No. 02 Civ. 5575, 2006 WL 3057232 (S.D.N.Y. Oct. 25, 2006)	\$ 2,500,000,000	\$ 147,500,000	5.90%	3.15 <sup>11</sup>	✓
6	<i>In re Nortel Networks Corp. Sec. Litig.</i> ("Nortel I"), No. 01 Civ. 01855 (S.D.N.Y. Jan 29, 2007) (Dkt. No. 194)	\$ 1,142,775,308	\$13,160,022.84 and <sup>1</sup> 9,430,016 shares of stock	3.00%	2.06	✓
7	<i>In re Royal Ahold N.V. Sec. &amp; ERISA Litig.</i> , 461 F. Supp. 2d 383 (D. Md. 2006)	\$ 1,100,000,000	\$ 130,647,869	11.88%	2.57	✓
8	<i>In re Nortel Networks Corp. Sec. Litig.</i> ("Nortel II"), No. 04 Civ. 02115 (S.D.N.Y. Dec. 26, 2006) (Dkt. No. 177)	\$ 1,074,265,298	\$29,612,594.24 and <sup>2</sup> 25,146,710 shares of stock	8.00%	4.77	✓
9	<i>In re McKesson HBOC, Inc. Sec. Litig.</i> , No. 99-cv-20743 (N.D. Cal. Jan. 18, 2008) (Dkt. No. 1727)	\$ 960,000,000	\$ 74,784,000 <sup>3</sup>	7.79%	2.40	✓
10	<i>In re UnitedHealth Group Inc. PSLRA Litig.</i> , 643 F. Supp. 2d 1094 (D. Minn. 2009)	\$ 925,500,000	\$ 64,785,000	7.00%	3.59 <sup>12</sup>	✓
11	<i>In re American Int'l Group, Inc. Sec. Litig.</i> , No. 04 Civ. 08141 (S.D.N.Y. Feb. 02, 2012) (Dkt. No. 619)	\$ 822,500,000	\$ 101,912,500	12.39%	0.95	✓
12	<i>In re HealthSouth Corp. Sec. Litig.</i> , No. 03 Civ. 1500 (N.D. Ala.) (Dkt. Nos. 1112, 1617, 1721, 1722)	\$ 804,500,000	\$ 138,199,100 <sup>4</sup>	17.18%	1.20	✓
13	<i>Carlson v. Xerox Corp.</i> , 596 F. Supp. 2d 400 (D. Conn. 2009)	\$ 750,000,000	\$ 120,000,000	16.00%	1.25	✓

Joint Reply Declaration Exhibit 11

Lodestar/Multiplier and Fee Percentages in PSLRA Settlements \$400 million and Above

The cases highlighted in blue are discussed in the Miller declaration ¶ 58 (\$550 - \$800 million) and in the Coffee declaration ¶ 17 (\$490 - \$690 million)

No.	Order	Total Settlement Amount	Fee Awarded	Fee Percentage Awarded (as percentage of the Gross Settlement Amount)	Lodestar Multiplier	Passed motion to dismiss stage prior to settlement?
14	<i>In re Wachovia Preferred Sec. and Bond/Notes Litig.</i> , No. 09 Civ. 06351 (S.D.N.Y. Jan 03, 2012) (Dkt. No. 161)	\$ 627,000,000	\$ 75,240,000	12.00%	2.30	
15	<i>In re Lucent Techs., Inc. Sec. Litig.</i> , 327 F. Supp. 2d 426 (D.N.J. 2004)	\$ 608,350,000	\$ 102,477,500 <sup>5</sup>	16.85%	2.14	✓
16	<i>In re Countrywide Fin. Corp. Sec. Litig.</i> , No. 07 Civ. 05295 (C.D. Cal. Mar. 04, 2011) (Dkt. No. 1062)	\$ 601,500,000	\$ 46,472,000	7.73%	0.67	✓
17	<i>In re Cardinal Health Inc. Sec. Litig.</i> , 528 F. Supp. 2d 752 (S.D. Ohio 2007)	\$ 600,000,000	\$ 107,580,000	17.93%	5.85	✓
18	<i>In re Initial Public Offering Sec. Litig.</i> , 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	\$ 586,000,000	\$ 170,084,950	29.02%	0.45	✓
19	<i>In re Lehman Bros. Sec. and ERISA Litig.</i> , No. 09 MD 2017 (S.D.N.Y. June 29, 2012) (Dkt. No. 970)	\$ 516,218,000	\$ 56,729,265	10.99%	1.50	✓
20	<i>In re BankAmerica Corp. Sec. Litig.</i> , 228 F. Supp. 2d 1061 (E.D. Mo. 2002)	\$ 490,000,000	\$ 86,416,085 <sup>6</sup>	17.64%	3.00	✓
21	<i>In re Merrill Lynch &amp; Co., Inc., Sec., Deriv. and ERISA Litig.</i> , No. 07 Civ. 9633, 2009 WL 2407551 (S.D.N.Y. Aug. 04, 2009)	\$ 475,000,000	\$ 37,121,250	7.82%	2.26	
22	<i>In re Dynegy, Inc. Sec. Litig.</i> , No. H-02-1571 (S.D. Tex. July 7, 2005) (Dkt. No. 686)	\$ 474,050,000	\$35,151,482 and <sup>7</sup> \$5,933,476 in stock	8.73%	4.04	✓
23	<i>In re Raytheon Co. Sec. Litig.</i> , No. 99 Civ. 12142 (D. Mass. Dec. 06, 2004) (Dkt. No. 645)	\$ 460,000,000	\$ 41,400,000 <sup>8</sup>	9.00%	3.15	✓
24	<i>In re Waste Mgm't, Inc. Sec. Litig.</i> , No. H-99-2183 (S.D. Tex. Apr. 29, 2002) (Dkt. No. 248)	\$ 457,000,000	\$ 36,225,000	7.93%	5.29	✓
25	<i>In re Adelphia Commc'ns Corp. Sec. and Deriv. Litig.</i> , No. 03 MDL 1529, 2006 WL 3378705 (S.D.N.Y. Nov. 16, 2006)	\$ 455,000,000	\$ 97,370,000	21.40%	2.89	

### Lodestar/Multiplier and Fee Percentages in PSLRA Settlements \$400 million and Above

The cases highlighted in blue are discussed in the Miller declaration ¶ 58 (\$550 - \$800 million) and in the Coffee declaration ¶ 17 (\$490 - \$690 million)

No.	Order	Total Settlement Amount	Fee Awarded	Fee Percentage Awarded (as percentage of the Gross Settlement Amount)	Lodestar Multiplier	Passed motion to dismiss stage prior to settlement?
26	<i>In re Global Crossing Ltd. Sec. and ERISA Litig.</i> , No. 02 Civ. 910 (S.D.N.Y.) (Dkt. Nos. 564, 655, 772); <i>In re Global Crossing Ltd. Sec. and ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004); <i>In re Global Crossing Ltd. Sec. Litig.</i> , 2005 WL 1668532 (S.D.N.Y. July 12, 2005)	\$ 447,800,000	\$ 72,720,000 <sup>9</sup>	16.24%	2.57 <sup>13</sup>	<sup>14</sup>
27	<i>In re Qwest Commc'ns Int'l Inc. Sec. Litig.</i> , No. 01 Civ. 01451 (D. Colo. Sept. 29, 2006) (Dkt. No. 1051); 625 F. Supp. 2d 1143 (D. Colo. 2009)	\$ 445,000,000	\$ 66,750,000 <sup>10</sup>	15.00%	3.24	✓
28	<i>Ohio Pub. Emp. Ret. Sys. et al. v. Freddie Mac, et al.</i> , No. 03 Civ. 4261, 2006 U.S. Dist. LEXIS 98380 (S.D.N.Y. Oct. 26, 2006)	\$ 410,000,000	\$ 82,000,000	20.00%	2.32 <sup>13</sup>	✓
29	<i>In re Marsh &amp; McLennan Co., Inc. Sec. Litig.</i> , No. 04 Civ. 8144, 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009)	\$ 400,000,000	\$ 52,911,486	13.23%	0.44	✓

Footnotes:

<sup>1</sup> Nortel I provided for \$438,667,428 and 314,333,875 shares of (pre-consolidation) Nortel stock. 3% of each was awarded to counsel, resulting in \$13,160,022.84 in cash and 9,430,016 shares of common stock.

<sup>2</sup> Nortel II provided for \$370,157,428 and 314,333,875 shares of Nortel common stock valued at \$2.24/share. 8% of each was awarded to counsel, resulting in \$29,612,594.24 in cash and 25,146,710 shares of common stock.

<sup>3</sup> In *McKesson HBOC*, there were separate settlements with different defendants in 2007, 2008 and 2012. Much of the fee data concerning these settlements is not publicly available. The fee data indicated herein is just against the McKesson defendants, which accounts for more than 92% of the total settlement amount.

<sup>4</sup> There were several different settlements in *HealthSouth* against various defendants over the course of 3 years: \$445 million in 2008, \$109 million in 2009, \$117 million in 2010, and \$133.5 million in 2010 for the Bonds case. Attorneys' fees of \$77,875,000 of \$445 million, or 17.5%, was approved in 2008, \$20,154,100 of \$109 million, or 18.49%, was approved in 2009, \$22,815,000 of \$117 million, or 19.5%, was approved in 2010 and \$17,355,000 of \$133.5 million, or 13%, was approved in 2010 for the Bonds case. The fee percentage and lodestar information here represent the aggregate of all the settlements.

Lodestar Multiplier Averages for...	
3.70	all 29 cases
3.89	the 25 cases that passed motion to dismiss
2.51	the 4 cases that did not pass the motion to dismiss

## Lodestar/Multiplier and Fee Percentages in PSLRA Settlements \$400 million and Above

The cases highlighted in blue are discussed in the Miller declaration ¶ 58 (\$550 - \$800 million) and in the Coffee declaration ¶ 17 (\$490 - \$690 million)

No.	Order	Total Settlement Amount	Fee Awarded	Fee Percentage Awarded (as percentage of the Gross Settlement Amount)	Lodestar Multiplier	Passed motion to dismiss stage prior to settlement?
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<sup>5</sup> There were several different settlements in *Lucent Techs.* for various classes: \$517 million (made up of cash, stock and warrants) for the common shareholders class, \$69 million for the ERISA class, \$4.6 million for an individual plaintiff, \$3.75 million for debt security holders, and \$14 million for the derivative plaintiffs. Attorneys' fees were \$87.89 million (or 17%), \$10.35 million (or 15%), \$920,000 (or 20%), \$937,500 (or 25%) and \$2.38 million (or 17%) for each respective class. The fee percentage and lodestar information here represent the aggregate of all the settlements.

<sup>6</sup> There were two settlements in *BankAmerica* for different plaintiff classes: \$156.8 million for BankAmerica plaintiffs and \$333.2 million for the NationsBank plaintiffs. Attorneys' fees were \$27.58 million and \$58.83 million respectively. The fee percentage and lodestar information here represent the aggregate of both of the settlements.

<sup>7</sup> In *Dynegy*, the settlement was \$406.05 million in cash and 17,578,781 shares worth \$68 million of Dynegy stock. The court awarded 8.7257% of both, which amounts to \$35,151,482 in cash and 1,533,872 shares of Dynegy common stock worth \$5.93 million, for a total fee of \$41.08 million.

<sup>8</sup> There were two settlements in *Raytheon* against multiple defendants: \$210 million in cash and \$200 million worth of settlement warrants with certain defendants, and \$50 million with PricewaterhouseCoopers. The fee percentage and lodestar information here represent the aggregate of both of the settlements.

<sup>9</sup> There were several different settlements in *Global Crossing* against various defendants: \$245 million with the Global Crossing Officers and Directors ("D&O") on March 19, 2004, \$75 million with Citigroup on March 8, 2005, \$25 million with Arthur Andersen LLP on July 7, 2005, \$99 million with various financial institutions on July 25, 2006 and \$3.8 million with Microsoft Corp. and Softbank Corp. on May 30, 2007. Attorneys' fees were \$38.4 million (approximately 16%), \$13.3 million (or 17%), \$4.5 million (or 17%), \$15.95 million (or 16%) and \$570,000 million (or 15%) from each respective settlement. The fee percentage and lodestar information here represent the aggregate of all the settlements.

<sup>10</sup> There were two settlements in Qwest: \$400 million with certain defendants in 2006 and \$45 million with other defendants in 2009. Attorneys' fees were \$60 million (or 15%) and \$6.75 million (or 15%) respectively. The fee percentage and lodestar information here represent the aggregate of both of the settlements.

<sup>11</sup> Counsel submitted \$46.86 million in lodestar, but the Court reduced the lodestar to \$39.97 million and awarded a fee of \$147.5 million. The fee award was 3.15 times the submitted lodestar and 3.69 times the reduced lodestar.

<sup>12</sup> Counsel submitted \$18.06 million in lodestar, but the Court reduced the lodestar to \$9.98 million and awarded a fee of \$64.79 million. The fee award was 3.59 times the submitted lodestar and 6.5 times the reduced lodestar.

<sup>13</sup> For *Global Crossing* and *Freddie Mac*, the papers setting forth the lodestar multiplier information were not available on PACER or Westlaw. The information set forth in this chart was calculated based on information set forth in Appendix A to the Court's order in *Carlson v. Xerox Corp.* See 596 F. Supp. 2d 400, 414 (D. Conn. 2009).

<sup>14</sup> In *Global Crossing*, the Court ruled on the underwriters' motion to dismiss in December 2003 but had not ruled on the other defendants' motion to dismiss as of the time the first settlement was preliminarily approved in March 19, 2004. In this chart, we treat the case as if it had not passed the motion to dismiss as of the time of settlement.

# **EXHIBIT 12**