UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF PENNSYLVANIA

DOUGLAS S. CHABOT, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. WALGREENS BOOTS ALLIANCE, INC., et al., Defendants.	Civ. Action No. 1:18-cv-02118-JPW CLASS ACTION DECLARATION OF DAVID A. KNOTTS IN SUPPORT OF SETTLEMENT MOTIONS

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I, DAVID A. KNOTTS, declare as follows:

1. I am an attorney at the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), counsel for Lead Plaintiffs in the above-captioned case. I am admitted *pro hac vice* in this Action.[1] I submit this Declaration in support of the Motions for Final Approval of Settlement and Approval of Plan of Allocation, Attorneys' Fees and Litigation Expenses, and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

I. INTRODUCTION

2. Since this Action and its predecessor began several years ago, Lead Plaintiffs and Lead Counsel have vigorously prosecuted these claims. Based on this effort, Lead Plaintiffs and Lead Counsel succeeded in obtaining a $192.5 million recovery for the Class. Lead Counsel believes that the proposed Settlement represents an excellent result for the Class. The extraordinary nature of the Settlement and the extreme risk that Lead Counsel faced when pursuing this litigation is illustrated by the rarity of this result, across multiple metrics. As further discussed below, the $192.5 million Settlement:

[1] Unless otherwise stated or defined in this Declaration, all capitalized terms used herein shall have the meanings provided in the Stipulation of Settlement dated as of October 18, 2023 (the "Stipulation"). ECF 307-1.

- constitutes the largest securities class action recovery ever achieved in this District;
- constitutes the second largest recovery ever achieved in any Pennsylvania federal court;
- represents nearly 15 times the median securities class action settlement amount in 2022 of $13 million;
- ranks in the top 100 largest securities class action recoveries of all time, in any jurisdiction;
- represents 18%-22.5% of Lead Plaintiffs' estimated damages, an amount many times greater than the 1.7% median percentage recovery for cases settled with estimated damages of between $500 and $999 million and the 2.2% median percentage recovery for cases settled with estimated damages above $1 billion; and
- represents the largest securities recovery ever paid by a company and its executives for allegedly issuing misleading public statements that impacted a different public company's stock price.

See infra at ¶¶114-115.

3. Lead Plaintiffs and Lead Counsel were well informed of the strengths and weaknesses of the claims in the Action at the time they reached the proposed Settlement. As described in further detail herein, Lead Counsel devoted over 31,400 hours and advanced over $1.4 million in costs on a contingent basis over a span of eight years, all without any assurance of recovery. During that time, Lead Counsel successfully opposed Defendants' two motions to dismiss; obtained class certification; prevailed on multiple fiercely-contested discovery motions, including obtaining a key ruling that Walgreens waived its attorney-client privilege; took or defended twenty-

four fact depositions; obtained and reviewed nearly one million pages of documents; engaged in complex expert discovery involving five experts, twelve expert reports, and six expert depositions; thoroughly briefed and defeated Defendants' aggressive and potentially dispositive 72-page motion for summary judgment; and prepared for trial.

4. Lead Counsel is also appreciative of the Court's indulgence and diligence in resolving multiple dispositive motions and discovery disputes, resulting in the following eight written opinions – two were published in the Federal Reporter, another six are available on Westlaw – regarding a variety of complex legal issues, all of which materially advanced the case towards its ultimate resolution:

- *Hering v. Rite Aid Corp.*, 331 F. Supp. 3d 412, 428 (M.D. Pa. 2018) (initial motion to dismiss ruling, dismissing the Rite Aid Defendants but finding a claim against the Walgreens Defendants);
- *Hering v. Walgreens Boots All., Inc.*, 341 F. Supp. 3d 412, 419 (M.D. Pa. 2018) (granting Walgreens' motion for judgment on the pleadings for lack of standing; denying Lead Plaintiffs' motion to intervene);
- *Chabot v. Walgreens Boots All., Inc.*, 2019 WL 2992242, at *1 (M.D. Pa. Apr. 15, 2019) (denying the Walgreens Defendants' motion to dismiss);
- *Chabot v. Walgreens Boots All., Inc.*, 2019 WL 13162432 (M.D. Pa. Aug. 16, 2019) (discovery ruling ordering Walgreens to produce certain documents without redactions for relevance);
- *Chabot v. Walgreens Boots All., Inc.*, 2020 WL 3410638, at *1 (M.D. Pa. June 11, 2020) (discovery ruling finding waiver of Walgreens' attorney-client privilege and issuing multiple privileged-based rulings on specific documents submitted to the Court);

- *Chabot v. Walgreens Boots All., Inc.*, 2021 WL 767516 (M.D. Pa. Feb. 26, 2021) (discovery ruling granting in part, and denying in part, a motion to quash filed by Walgreens' attorneys);
- *Chabot v. Walgreens Boots All., Inc.*, 2021 WL 949443 (M.D. Pa. Mar. 12, 2021) (discovery ruling regarding additional deponents and a remote deposition protocol); and
- *Chabot v. Walgreens Boots All., Inc.*, 2023 WL 2908827 (M.D. Pa. Mar. 31, 2023) (denying the parties' motions for summary judgment).

5. The Settlement was also achieved only after contentious arm's-length negotiations between the parties, including a formal mediation process overseen by former U.S. District Judge Layn R. Phillips, a respected mediator with extensive experience mediating large complex class actions. Following an all-day, in-person mediation session on July 27, 2023 and subsequent negotiations, Judge Phillips issued a mediator's proposal to settle all claims in exchange for $192.5 million in cash, which the parties ultimately accepted.

6. Lead Counsel believes that the Settlement represents an outstanding outcome for the Class and that its approval would be in the best interests of the Class. As detailed below, the proposed $192.5 million Settlement represents a substantial percentage of the estimated recoverable damages that Lead Plaintiffs reasonably believed could be established at trial. Lead Plaintiffs also faced significant risks in establishing Defendants' liability and proving loss causation and damages.

7. Thus, as explained further below, the Settlement provides a considerable benefit to the Class by conferring a substantial, certain, and immediate recovery while

avoiding the risks of continued litigation, including the substantial risk that the Class could recover far less than $192.5 million (or nothing at all) after years of additional litigation and delay.

8. In addition to seeking final approval of the Settlement, Lead Plaintiffs seek approval of the proposed Plan of Allocation. As discussed in further detail below, the Plan of Allocation, which is set forth in the Notice mailed to Class Members, provides for the distribution of the Net Settlement Fund to Class Members who submit Claim Forms that are approved for payment by the Court on a *pro rata* basis based on the number of Rite Aid Corporation ("Rite Aid") shares they purchased that were eligible to participate in the Settlement.

9. In addition, Lead Counsel is applying for an award of attorneys' fees of 30% of the Settlement Fund. Over the past eight years of litigation, Lead Counsel spent over 31,400 hours working to overcome substantial obstacles and achieve this Settlement for the Class. Lead Counsel prosecuted this case on a fully contingent basis and incurred significant litigation expenses and thus bore all of the risk of an unfavorable result. As discussed in the Motion for Attorneys' Fees and Litigation Expenses, the requested fee of 30% of the Settlement Fund – which has been reviewed and approved by Lead Plaintiffs – is well within the range of percentage awards granted by courts in this Circuit and elsewhere in similarly sized securities class action settlements. Lead Counsel respectfully submits that the fee request is fair and

reasonable in light of the result achieved in the Action, the efforts of Lead Counsel, and the risks and complexity of the litigation. Further, Lead Counsel's fee and expense application also seeks payment of litigation expenses incurred by Lead Counsel in connection with the institution, prosecution, and settlement of the Action totaling $1,429,116.29.

II. HISTORY AND PROSECUTION OF THE ACTION

A. Background

10. This is a securities class action on behalf of all persons or entities who purchased or otherwise acquired Rite Aid common stock between October 20, 2016 and June 28, 2017, inclusive (the "Class Period"), and were damaged thereby (the "Class").[2] At issue are allegedly misleading statements and omissions made by Walgreens Boots Alliance, Inc. ("Walgreens" or "WBA") and certain of its executives regarding the status of the FTC review of a then-pending merger between Rite Aid and Walgreens (the "Merger"). Lead Plaintiffs contend that Walgreens'

[2] Excluded from the Class are: (i) Defendant WBA, and any of its subsidiaries, parents, and affiliates; (ii) Defendants Stefano Pessina and George R. Fairweather and any of their immediate families, any entities in which they have a controlling interest, and their legal representatives, heirs, successors, or assigns; and (iii) the officers and directors of Rite Aid during the Class Period, and any members of their immediate families, any entities in which they have a controlling interest, and their legal representatives, heirs, successors, or assigns. Also excluded from the Class are all persons and entities who timely and validly requested exclusion from the Class in accordance with the requirements set by the Court in connection with the Class Notice.

misstatements and omissions artificially inflated Rite Aid stock price during the pendency of the Merger.

11. Defendant Stefano Pessina is Walgreens' Executive Chairman and served as Walgreens' CEO during the Class Period. Defendant George R. Fairweather was Walgreens' Global CFO during the Class Period.

12. More specifically, Lead Plaintiffs – on behalf of a class of Rite Aid investors – alleged that Walgreens, Pessina, and Fairweather made materially false and misleading statements concerning the level of regulatory risk faced by the Merger. In particular, Lead Plaintiffs alleged that during the Class Period, Defendants made false and misleading statements: (i) downplaying or disputing contrary reports from journalists signaling regulatory turbulence, and (ii) representing that inside knowledge of the FTC gave confidence that the deal would close.

13. Lead Plaintiffs further alleged that these alleged misstatements and omissions by Walgreens' executives inflated or maintained inflation in Rite Aid's stock price and that the Class of Rite Aid investors suffered damages when the alleged truth regarding these matters was publicly disclosed.

14. This was a unique case – Lead Counsel had to develop the strategy, evidence, and theories of liability from scratch. One commentator from Thomson Reuters wrote an article about this case entitled, *Judge certifies unusual class of Rite Aid investors to sue Walgreens over busted merger*, and observed, "[i]t's extremely

rare for shareholders of one company to sue another corporation and its executives for allegedly defrauding them." Ex. 1 hereto. Walgreens used this unusual paradigm to argue at the outset of this case (and repeatedly thereafter): "The alleged fraudulent scheme appears pointless and the question 'why?' leaps off every page of the Complaint." ECF 39 at 1. Walgreens described the claims as a "nonsensical fraud," an "irrational fraud perpetrated without motive," and an "invention of Plaintiffs' counsel." ECF 49 at 5-7. In the face of these risks and this unusual factual paradigm, Lead Plaintiffs and Lead Counsel litigated this case for years, conducted extensive discovery, persevered in multiple contested motions, and achieved this groundbreaking Settlement for the benefit of the Class.

B. Procedural History

1. Lead Counsel Files the *Hering* Litigation and Overcomes Defendants' Motion to Dismiss

15. On December 18, 2015, Lead Counsel filed a putative securities class action complaint on behalf of plaintiff Jerry Hering in the United States District Court for the Middle District of Pennsylvania (the "Court"), styled *Hering v. Rite Aid Corp., et al.*, No. 1:15-cv-02440 (M.D. Pa.). Lead Counsel filed an amended complaint on December 11, 2017 alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") and SEC Rule 10b-5 against the same defendants.

16. On July 11, 2018, in a published decision, the Court granted the Rite Aid Defendants' motion to dismiss but denied the Walgreens Defendants' motion to dismiss, finding that "Plaintiff has pled sufficient facts to strongly infer that Walgreens was at least reckless in making statements that would mislead a reasonable investor about the level of regulatory risk." *Hering v. Rite Aid Corp.*, 331 F. Supp. 3d 412, 428 (M.D. Pa. 2018).

17. Given Rite Aid's dismissal, however, the relevant class period was narrowed based on the remaining actionable misstatements, all of which occurred after Mr. Hering's last purchase of Rite Aid stock. Shortly thereafter, Walgreens filed a motion for judgment on the pleadings based on Mr. Hering's purported lack of standing and Lead Plaintiffs simultaneously sought to intervene as new plaintiffs. On October 24, 2018, the Court granted Walgreens' motion, denied Lead Plaintiffs' motion to intervene, and dismissed the *Hering* action as moot. In dismissing the *Hering* action, the Court noted, however, that Lead Plaintiffs were "free to bring their claims in a new action." *Hering v. Walgreens Boots All., Inc*., 341 F. Supp. 3d 412, 419 (M.D. Pa. 2018).

18. On November 2, 2018, Lead Counsel filed the Complaint on behalf of Plaintiffs Douglas S. Chabot, Corey M. Dayton, and Joel M. Kling in this Court, styled *Chabot, et al. v. Walgreens Boots Alliance, Inc., et al.*, No. 1:18-cv-02118 (together with the related *Hering* case, the "Action"). The Complaint alleged the

same violations of §§10(b) and 20(a) of the 1934 Act and SEC Rule 10b-5 by Defendants and was based on the specific statements that the Court ruled were actionably false and misleading in the *Hering* opinion.

2. Lead Counsel Again Overcomes Defendants' Motion to Dismiss

19. Defendants moved to dismiss the Complaint on December 26, 2018. ECF 36-39. In particular, Defendants argued that: (i) the Complaint "makes no effort to explain why Walgreens executives would care about the market price of Rite Aid stock at all, much less enough to commit fraud in an effort to influence it"; (ii) the Complaint fails to "demonstrate that the individual defendants had a motive for their wrongful conduct"; (iii) "the suggestion that Walgreens concealed [negative FTC feedback] is absurd"; and (iv) the Complaint "fail[s] to plead that Walgreens' executives knew of specific facts that [were] contrary to their public statements." ECF 39 at 11, 14, 17, 19. Summing up their position, Defendants argued: "The Complaint accuses Defendants of a pointless fraud and pleads no plausible motive for committing it, no facts showing what contrary information Defendants possessed, and no confidential witnesses or other internal sources that refute Defendants' public statements. . . . The Court should grant Defendants' motion to dismiss." *Id.* at 21, 22.

20. On February 7, 2019, Lead Plaintiffs filed their opposition. ECF 48. In that opposition, Lead Plaintiffs argued that Defendants' motion should be denied because it reiterated the same arguments, the same authorities, and the same legal

theories previously rejected by the Court in the *Hering* action, including Defendants' scienter arguments. *Id*. Lead Plaintiffs' opposition also substantively argued that the Complaint adequately pleaded: (i) the materiality of the alleged misstatements; (ii) scienter; (iii) that Defendants' alleged misstatements were not protected by the PSLRA's safe harbor; and (iv) that Rite Aid stock was improperly and artificially inflated as a direct result of Defendants' material misrepresentations to the investing public, which harmed Lead Plaintiffs. *Id*.

21. Defendants' Motion to Dismiss reply brief again strongly criticized the likelihood of success of these unusual claims, which were brought against Walgreens by the investors of a different company:

- "These flimsy 'must-have-known' type allegations of recklessness cannot overcome the lack of fraudulent motive." ECF 49 at 2;
- "Of course, even if Plaintiffs' motive theory was rational – and it plainly is not – it is based entirely on speculation. It is an invention of Plaintiffs' counsel that is unsupported by any particularized allegations of fact in the Complaint." *Id.* at 5;
- "[D]espite what Plaintiffs suggest, the absence of any conceivable motive cannot be ignored, allowing a nonsensical fraud to be pleaded through allegations of recklessness." *Id.* at 6-7; and
- "Plaintiffs have alleged an irrational fraud perpetrated without motive." *Id.* at 7.

22. On April 15, 2019, the Court entered a Memorandum and Order denying Defendants' Motion to Dismiss in its entirety. ECF 50.

23. On April 29, 2019, Defendants filed and served their Answer to the Complaint. ECF 53. Defendants denied the vast majority of Lead Plaintiffs' allegations. *Id*. In addition, Defendants also asserted 30 affirmative defenses, including that Lead Plaintiffs could not show that Defendants acted with scienter; that the alleged misstatements concerned non-actionable matters of opinion, or were puffery or soft information, rather than matters of material fact; that Lead Plaintiffs knew, or in the exercise of reasonable care could have known, of the alleged untruths and/or omissions of which they complained; and that the misstatements and omissions alleged in the Complaint did not affect the market price of Rite Aid stock. *Id*.

3. Lead Plaintiffs Produce Discovery and Obtain Class Certification

24. In connection with Lead Plaintiffs' impending motion for class certification, on May 9, 2019, Defendants served their First Request for the Production of Documents on Lead Plaintiffs. Lead Counsel prepared responses and objections to these requests and negotiated extensively with Defendants over the scope of the production. Lead Counsel worked with each of the Lead Plaintiffs to gather potentially relevant and responsive materials and carefully reviewed these documents for privilege and relevance. Lead Plaintiffs made their first of 11 productions of documents to Defendants on July 18, 2019, and made their last production on November 6, 2019. Ultimately, Lead Plaintiffs produced to Defendants over 400 documents, totaling more than 2,493 pages.

25. On July 26, 2019, Plaintiffs Douglas S. Chabot, Corey M. Dayton, and Joel M. Kling filed their Motion for Class Certification seeking: (i) their appointment as Class Representatives, (ii) Robbins Geller's appointment as Class Counsel, (iii) Kaufman, Coren & Ress, P.C.'s appointment as Liaison Counsel, and (iv) certification of the proposed Class.[3] ECF 65.

26. After depositions of all three proposed class representatives and Plaintiffs' expert, on December 20, 2019, Defendants filed their opposition to Plaintiffs' Motion for Class Certification. ECF 102. In a notice sent to this Court on January 16, 2020, Plaintiffs noted that "Defendants' Opposition addresses only the adequacy of Mr. Kling as a proposed class representative," but that Defendants otherwise did not oppose Lead Plaintiffs' other requests. ECF 119. Lead Plaintiffs therefore submitted a proposed order granting Plaintiffs' Motion for Class Certification, removing Mr. Kling as class representative, but otherwise maintaining the terms of Lead Plaintiffs' initial proposed order. *Id.* The Court granted Lead Plaintiffs' Motion for Class Certification on January 21, 2020. ECF 121.

27. On December 7, 2020, Lead Plaintiffs moved this Court for an order pursuant to Rule 23 of the Federal Rules of Civil Procedure approving the form and

[3] On July 28, 2020, the Court granted Lead Plaintiffs' request for Kaufman to withdraw to their appearance as Liaison Counsel and substitute Saxton & Stump LLC as Liaison Counsel. ECF 142.

manner of class notice. ECF 155. On December 8, 2020, the Court approved the form and manner of class notice, involving a widely publicized and extensive distribution where potential Class Members were notified of the litigation and the right to exclude themselves from the litigation. ECF 157. Shortly after, beginning in December 2020, A.B. Data, Ltd., the Court's approved notice administrator, began mailing the class notice to potential Class Members.

C. Plaintiffs Embark on an Extensive and Exhaustive Discovery Plan

28. There was no preexisting blueprint for litigating these claims. This case involved no accounting restatement or pre-lawsuit investigation or finding of wrongdoing by the SEC, DOJ, or any other entity that could have given Lead Counsel a head start in litigating these claims. This also appears to be the only successful securities case in history alleging misrepresentations about the status of an FTC antitrust merger review. As a result, Lead Counsel had to build the factual record in this case from scratch.

29. Moreover, because this case involved misrepresentations about an inherently legal process, most of the key evidence in this case was initially concealed by redactions and attorney-client privilege designations. Lead Counsel developed and executed a high-risk, high-reward discovery strategy that involved fighting through those objections and prevailing in several contested discovery motions. As a result,

Lead Counsel, with the Court's assistance, forcefully illuminated the previously redacted evidence contradicting the alleged misrepresentations at issue.

30. To illustrate the favorable impact for the Class of these discovery disputes, in particular the privilege and redaction issues, the attached Exhibit 2 contains a redacted version of the "Factual Background & Procedural History" section of the Court's summary judgment ruling. The redactions apply to any references to evidence based on documents estimated to be produced as a result of the motion to compel and motion to quash rulings described below (including deposition testimony based upon previously withheld or redacted documents and documents obtained from third parties after Lead Counsel provided the Court's motion to compel ruling to those third parties in meet and confer).

31. As shown in Exhibit 2, most of the key supporting evidence in this case was obtained as a result of Lead Counsel's success in illuminating previously withheld and redacted evidence in discovery. It is unclear whether this case would have survived summary judgment in its entirety had Lead Counsel not succeeded in these efforts, but Exhibit 2 provides some insight into that question. There is no doubt, however, that had Lead Counsel not embarked on (and succeeded in) this time-intensive strategy, this case would have been worth a mere fraction of its ultimate value.

32. Numerous fact discovery disputes arose between the parties and non-parties, requiring extensive written correspondence, countless telephonic conferrals, and hours upon hours of negotiations between counsel. The vast majority of disputes were cooperatively and productively resolved. The parties, however, reached an impasse on the issues set forth directly below.

1. Dispute Regarding Walgreens' Board-Level Documents

33. On May 3, 2019, Lead Plaintiffs served their First Request for Production of Documents on Defendants. The request, *inter alia*, sought: (i) "[a]ll minutes (with all exhibits, attachments, agenda, or other documents, and including drafts) of all meetings of the [Walgreens] Board concerning or discussing the Proposed Transactions," and (ii) "[a]ll presentations and materials presented or utilized in any meeting of the [Walgreens] Board concerning or discussing the Proposed Transactions." ECF 55 at 2.

34. After extensive negotiations, the parties reached an impasse, and, on July 18, 2019, Lead Plaintiffs filed a letter with the Court outlining the parties' respective positions. ECF 55. As the letter explained, while Walgreens had agreed to produce all responsive documents under the requests at issue, Walgreens intended to redact any information it considered non-responsive from its board-level documents. *Id.*

35. On July 22, 2019, the Court assigned the dispute to Chief Magistrate Judge Karoline Mehalchick for the purpose of resolving the parties' then-pending discovery dispute. ECF 60. The parties met via teleconference with Judge Mehalchick on August 1, 2019, but did not resolve their dispute on that call. Shortly after the teleconference, the parties submitted additional letter briefs. ECF 71-72.

36. The Court ordered Defendants to produce the documents at issue on August 2, 2019, with no redactions for relevance or non-responsiveness. ECF 74. This was a crucial initial ruling and helped set the stage for subsequent document discovery. Because Defendants were therefore left unable to redact document productions for relevance, Lead Plaintiffs could focus subsequent discovery disputes on redactions for privilege.

2. Dispute Regarding Defendants' Privilege Assertions

37. As Defendants' document productions rolled in, Lead Counsel's document review team began noticing extensive redactions for privilege and work product. Through the late summer and fall of 2019, Lead Counsel raised these issues with Defendants' counsel, meeting and conferring extensively (through several letters and phone calls) in an attempt to resolve the redactions without judicial intervention. While extensive, and conducted by all parties in good faith, these meet and confer efforts ultimately proved unsuccessful.

38. On December 3, 2019, Lead Plaintiffs submitted a letter to the Court addressing Walgreens' redaction and withholding of documents regarding its executives' "inside information" about the FTC review, which Lead Plaintiffs argued Defendants should produce. ECF 88. Among other issues, Lead Plaintiffs argued that Defendants had waived any privilege attached to their documents regarding the FTC review in light of Defendants' positions in this litigation and public statements revealing allegedly privileged discussions. After a telephonic conference with Judge Mehalchick, on December 11, 2019, the Court entered an order allowing Lead Plaintiffs to file a motion to compel. ECF 91.

39. On December 13, 2019, Lead Plaintiffs filed their Motion to Compel the Production of Non-Privileged Documents. ECF 93-94. In their motion, Lead Plaintiffs explained that Defendants "have redacted and withheld over 17,000 documents on purported grounds of privilege, or about 20% of their combined production in this litigation." ECF 94 at 1. The withholding and redaction of these documents containing Defendants' views of the FTC process and the FTC staff's feedback, Lead Plaintiffs argued, was improper because: (i) they conveyed "FTC facts" not protected by any privilege; and (ii) Defendants had waived privilege by "repeatedly tout[ing] their internal information concerning the FTC review," and by "affirmatively put[ting] the information they received from attorneys regarding the FTC review at issue[] in this case." ECF 94 at 16, 18.

40. Defendants filed their opposition brief to the Motion to Compel on January 3, 2020. ECF 108. Defendants argued that Lead Plaintiffs' "lawless request" should be denied because the communications at issue were indeed privileged and that waiver did not occur because: (i) Defendants "explicitly disclaimed reliance on any privileged information"; and (ii) the common interest doctrine applied to the privileged communications Walgreens had with two other third parties (Rite Aid and Fred's) because all three companies shared the common interest of FTC approval of the merger. *Chabot v. Walgreens Boots All., Inc.*, 2020 WL 3410638, at *1 (M.D. Pa. June 11, 2020) (describing Defendants' opposition). Lead Plaintiffs filed their reply brief in further support of their motion on January 10, 2020. ECF 115.

41. On January 17, 2020, the parties argued their positions at in-person hearing in front of Judge Mehalchick in Scranton. ECF 120. The parties engaged in subsequent briefing following that hearing. ECF 125, 131.

42. On June 11, 2020, the Court granted Lead Plaintiffs' Motion to Compel, finding that Defendants had "clearly put[] at issue, thus waiving from privilege, any documents and communications related to the regulatory approval and the status of the FTC review process." *Chabot*, 2020 WL 3410638, at *8. In its ruling, the Court ordered Defendants to "produce and un-redact all documents containing information or analysis regarding the status of the FTC review process" and submit a certification that each document meets the legal standards for privilege and/or work product under

Third Circuit law. *Id.* As to Defendants' common interest doctrine argument, while the Court stated that it was "satisfied that Walgreens shared a common legal interest with Rite Aid and Fred's insofar as all three parties were interested in FTC approval of the merger," the Court nonetheless ordered Defendants to produce such communications because "Defendants have placed at issue what they knew about the FTC review process." *Id.* The Court also found that certain of Defendants' privilege assertions "could easily be considered frivolous." *Id.* at *13.

43. On August 20, 2020, Defendants' counsel submitted the Court-ordered certification, stating that "88% of the documents previously withheld or redacted for privilege have now been produced in full, with no redactions." ECF 143 at 4.

3. Weil's Multi-Jurisdictional Motion to Quash Lead Plaintiffs' Supplemental Subpoena

44. Following the Court's June 11, 2020 privilege ruling, Walgreens ultimately produced and re-produced over 27,000 documents (or nearly 200,000 pages) that it had previously withheld or redacted. As the review of those documents was ongoing, Lead Counsel continued to observe the central role that attorneys from Weil, Gotschal & Manges LLP ("Weil") played in the un-redacted documents and communications about the FTC review. This presented a challenging dynamic because, not only did Weil serve as Walgreens' antitrust counsel in connection with the FTC review, but Weil also represented Defendants in this Action as primary litigation counsel.

45. Rather than rushing forward with a subpoena to opposing counsel, Lead Plaintiffs and Lead Counsel tread carefully and first probed the extent to which Defendants intended to utilize attorneys from Weil as fact witnesses in this case. On September 29, 2020, Lead Plaintiffs propounded interrogatories to Defendants to confirm whether they were asserting an advice of counsel defense and whether they intended to call witnesses from Weil at trial. Defendants' response was non-committal, and simply reserved the right to assert such defenses and call such witnesses at trial. Because Defendants did not affirmatively represent that they would not be calling Weil witnesses at trial, Lead Counsel had to prepare for that eventuality.

46. Lead Plaintiffs served Weil with a supplemental subpoena on November 20, 2020 seeking: (i) "[a]ll documents drafted by, received by, possessed by, or sent from" three Weil antitrust attorneys concerning the FTC review of the proposed Merger; and (ii) "[a]ll of [Weil's] communications with the FTC concerning Michael Moiseyev," a former FTC attorney who departed the FTC to join Weil shortly after the Merger fell through. Weil agreed to accept service on November 23, 2020. The parties subsequently met and conferred through emails and one lengthy phone call.

47. After the meet and confer efforts proved unsuccessful, Weil filed a Motion to Quash Lead Plaintiffs' supplemental subpoena on December 10, 2020 in the Southern District of New York. ECF 158, 158-1. In that motion, Weil requested

that Lead Plaintiffs and Lead Counsel be ordered to pay for Weil's fees and costs in responding to the subpoena and undertaking such "a pointless exercise." *Id*. at 4.

48. On December 11, 2020, Lead Plaintiffs provided to Weil a Stipulation and [Proposed] Order to Transfer on December 11, 2020, which would have sent the motion from the Southern District of New York back to this Court. *See* ECF 159 (describing procedure). Weil did not agree to the stipulation. Because the Southern District of New York contains a mere seven-day opposition for discovery motions, Lead Plaintiffs proposed a five-day extension to the opposition deadline. *Id.* Weil again did not agree.

49. As a result, through Lead Counsel's New York office, just four days after Weil filed the Motion to Quash, Lead Plaintiffs appeared in the Southern District of New York and on December 14, 2020, Lead Counsel filed a Letter-Motion requesting a transfer of the Motion to Quash back to this Court. *Id.* (exhibit 1). After Weil did not agree to an extension to the seven-day briefing deadline, Lead Plaintiffs also filed a formal request for extension in the Southern District of New York on December 15, 2020. All of this occurred while Weil's request that Lead Counsel pay its fees and costs was pending. Lead Plaintiffs filed a letter in this Court, keeping the Court apprised of the status in the Southern District of New York. *Id.* On December 15, 2020, the Southern District of New York granted Lead Plaintiffs' motion and

transferred Weil's Motion to Quash in this Court, where briefing and argument ensued.

50. As described below, Lead Counsel's flurry of activity over those five very time-consuming days, involving multiple Robbins Geller offices and different jurisdictions, paid significant dividends for the Class. The subpoena to Weil ultimately secured a number of otherwise undiscoverable and unobtainable documents, as well as a valuable restriction on the testimony of Weil witnesses at trial.

51. Back in this Court, in support of their Motion to Quash, Weil argued that Lead Plaintiffs' subpoena: (i) "directly target[ed] privileged documents . . . that were never seen by the defendants . . . and that therefore are irrelevant"; (ii) was "staggering in scope, requiring a review of more than 100,000 documents"; and (iii) "simply c[ame] too late, at the close of document discovery, and on the eve of depositions." ECF 158-1. In addition, Weil requested that if the Court decided to enforce the subpoena in any respect, "it should condition that production upon an award to Weil of its attorneys' fees and costs for undertaking that pointless exercise." *Id.*

52. Lead Plaintiffs filed their opposition to Weil's Motion to Quash on December 28, 2020, arguing that: (i) "the Third Circuit holds that where a client affirmatively employs an 'advice of counsel' defense, the internal files of the attorneys are discoverable even as to the client's state of mind"; (ii) "case law

establishes that documents not physically seen by Defendants Pessina or Fairweather remain discoverable"; (iii) "if Weil is permitted to withhold documents, a corresponding limit of testimony should apply at [summary judgment and] trial"; and (iv) the subpoena was timely because Lead Plaintiffs issued it nearly four months before the close of fact discovery. ECF 163 at 13, 25, 29. Weil filed its reply brief on January 11, 2021. ECF 173.

53. After a lengthy hearing conducted by Zoom, the Court issued an order on February 26, 2021, granting in part and denying in part Weil's motion to quash. ECF 194; *see also Chabot v. Walgreens Boots All., Inc.*, 2021 WL 767516 (M.D. Pa. Feb. 26, 2021). The Court granted Weil's motion "insofar as it need not produce documents which do not embody or reference or describe written or oral communications between Weil attorneys and Defendants." *Id.* at *9. The Court denied Weil's motion "in all other respects," ordering as follows: "work product is waived as to any material embodying a communication between Weil and Defendants, or which reference a communication between Weil and Defendants. Legal analysis and mental impressions within such material that was not communicated to Defendants can be redacted." *Id.* at *7. The Court thereby ordered Weil to produce all of its internal documents that "referenced or described written or oral communications between Weil attorneys and Defendants" on relevant issues. *Id.* at *9.

54. The Court also included a testimonial limitation at summary judgment and trial, ruling:

> Plaintiffs are unable to discover internal documents possessed by Weil which do not embody or reference a communication between Weil and Defendants. Therefore, Weil's testimonial evidence, too, is limited to its attorneys' communications with Defendants. Weil attorneys are precluded from testifying to their opinions on the FTC review, or what information was provided to them from the FTC. They may only testify to what they communicated to Defendants. Unless they waive the work product privilege for legal opinion and conclusions, they may not testify to their subjective reasoning for what they communicated.

Id. at *8. These were significant victories for Lead Plaintiffs and resulted in the production of multiple documents that Lead Plaintiffs ultimately cited in summary judgment papers and potentially led to the favorable summary judgment ruling.

55. Weil's resulting production contained a significant number of documents, most of which contained heavy redactions. Upon observing the scope of the redactions during document review, Lead Counsel raised these redactions to Weil in meet and confer discussions.

56. On June 4, 2021, the parties submitted a letter to the Court regarding the scope of information Weil had produced pursuant to the Court's Motion to Quash order. ECF 204. In particular, the parties disagreed about the information that Weil was entitled to redact in responsive documents. *Id.* In a letter to the Court dated June 7, 2021, Lead Plaintiffs requested an *in camera* review of a representative sample of documents produced by Weil in which, Lead Plaintiffs argued, Weil employed

extensive redactions that ran afoul of the Court's prior rulings. ECF 205. The Court held a teleconference with the parties on those issues on June 10, 2021. On June 28, 2021, the Court entered an order directing Weil to un-redact and produce certain requested documents, while allowing Weil to withhold "[w]ork product which does not embody or refer to communication between Weil and Defendants." ECF 213 at 4.

4. Dispute Regarding the Number of Depositions

57. As depositions were approaching, on February 2, 2021, Lead Plaintiffs submitted a letter to the Court seeking to increase the deposition limit under Federal Rule of Civil Procedure 30(a)(2)(A) from 16 to 19, to permit the deposition of three additional Walgreens executives. ECF 177. In particular, Lead Plaintiffs sought to depose Tim McLevish (special assistant to the CEO), David Miller (Walgreens' Divisional Vice President – Planning & Performance), and Aidan Clare (Walgreens' Senior Vice President and Global Treasurer). *Id.*

58. After Lead Plaintiffs filed that motion, Defendants agreed to a deposition of Tim McLevish, leaving Miller and Clare still subject to dispute. *See* ECF 199. After briefing, the Court denied Lead Plaintiffs' motion to take additional depositions. In doing so, however, the Court noted that the testimony of Miller and Clare may be duplicative, in light of their potential involvement in a "Plan B Working Group" at Walgreens. ECF 199; *see also Chabot v. Walgreens Boots All., Inc.*, 2021 WL 949443 (M.D. Pa. Mar. 12, 2021). While Lead Plaintiffs were unable to depose Miller

and Clare, the deposition of McLevish ultimately proved useful in establishing certain issues regarding Walgreens' work on a "Plan B," as previewed by the Court's deposition ruling. *Id.*

D. Document Discovery from Third Parties

59. Over the course of discovery, Lead Plaintiffs subpoenaed and negotiated production of documents from eight non-parties, nearly all of which produced documents and a witness for deposition. Lead Plaintiffs engaged in extensive negotiations with many of these third parties over search terms, custodians, and time frames for production. Specifically, Lead Plaintiffs issued subpoenas to UBS Securities LLC, Citigroup Global Markets, Inc. (represented by White & Case LLP), BofA Securities, Inc. (represented by Shearman & Sterling LLP), Rite Aid (represented by Skadden, Arps, Slate, Meagher & Flom LLP), Morrow Sodali LLC (represented by Seward & Kissel LLP), Finsbury LLC (represented by Davis+Gilbert LLP), A.T. Kearney Inc. (represented by Hogan Lovells US LLP), and Weil (represented by Weil).

60. The documents and deposition testimony obtained from these third parties also turned crucial in building support for Lead Plaintiffs' claims. While much of that material remains under seal, to provide just a flavor of this issue, the Court referenced the following documents and testimony obtained from third parties in its order denying Defendants' motion for summary judgment:

- "For example, [Rite Aid's CEO] Standley informed Rite Aid's board in early September 2016 that FTC staff were 'skeptical' an 'adequate buyer' would emerge and were worried the proposal too closely tracked another recent failed divestiture deal. (*See* Doc. 239-86 at 2)." ECF 286 at 6-7.

- "The same day, Standley informed Rite Aid's board of directors that its attorneys had advised 'the FTC staff still had questions about Fred's suitability as a divestiture buyer, including about Fred's financial viability.' (*See* Doc. 239-212 at 4; *see also* Pagni Dep. 127:10-25 ('If Rite Aid had heard it, we probably heard it as well.'))." ECF 286 at 14.

- "[A] Weil attorney advised that, 'although they don't like Fred's as the buyer' and there is 'serious opposition from management, compliance, payors, commissioners, unions, and probably others,' the FTC staff 'is trying to find a solution.'" ECF 286 at 15.

- "The day after the presentation, [Walgreens' financial advisor] BAML held a call with Walgreens executives, including Pessina; the group discussed Walgreens' 'thinking about what are the alternatives if RAD does not happen,' that the FTC 'does not see how Fred's could possibly handle the stores,' and whether Walgreens could 'buy certain assets from [Rite Aid]' instead. (*See* Doc. 239-241 at 2)." In an email chain scheduling a follow-up meeting, one BAML employee describes the agenda for the meeting as "'Plan C' ideas' and asks Vainisi to 'let us know what else if anything we can be doing on Plan A and B.' (*See* Doc. 293-123)." ECF 286 at 19.

In fact, many of the quotes directly above were initially hidden behind redactions from these producing third parties. *See* Ex. 2 hereto. Lead Counsel ultimately secured these very useful lesser-redacted versions from the third parties after dozens of meet and confer conversations and correspondence with those third parties.

61. In total, Defendants and non-parties produced more than 173,047 documents, totaling nearly 969,765 pages. Together with Lead Plaintiffs' productions, the discovery record totaled over 972,258 pages of documents.

Producing Party	Document Count	Page Count
Defendants	141,017	785,768
Lead Plaintiffs	470	2,493
BofA Securities, Inc.	7,524	30,781
Citigroup Global Markets, Inc.	552	5,142
A.T. Kearney Inc.	6,410	52,539
Rite Aid	5,773	36,136
UBS Securities LLC	832	11,530
Weil	10,939	47,869
Total	**173,517**	**972,258**

E. Fact Witness Depositions

62. Discovery in the Action involved 24 fact depositions, including depositions of multiple Walgreens executives, Rite Aid executives, Lead Plaintiffs, and several third party witnesses.

63. The chart below identifies the fact depositions that were taken in the Action, categorized by deponent, deposition date, the witness' affiliation or title during the Class Period, and location:

Deponent	Date	Witness Affiliation or Title	Location
Corey Dayton	September 11, 2019	Lead Plaintiff	Dallas, TX
Joel Kling	September 17, 2019	Plaintiff	Santa Clarita, CA
Douglas Chabot	October 10, 2019	Lead Plaintiff	Foxborough, MA
Joel Kling	December 12, 2019	Plaintiff	Santa Clarita, CA

Deponent	Date	Witness Affiliation or Title	Location
Peter Wilson	February 18, 2021	30(b)(6) witness for Walgreens	Remote
Malav Chakravorty	June 10, 2021	30(b)(6) witness for BofA	Remote
Chuck Greener	July 8, 2021	Walgreens' SVP, Global Chief Public Affairs	Remote
Joseph Greenberg	July 15, 2021	Walgreens' VP, Global M&A Legal	Chicago, IL
Joseph Greenberg	July 16, 2021	Walgreens' 30(b)(6) witness	Chicago, IL
David Schreibman	July 21-22, 2021	Walgreens Consultant	Chicago, IL
Mark Vainisi	July 23, 2021	Walgreens' SVP, Global M&A	Chicago, IL
Alex Gourlay	August 6, 2021	Walgreens' Co-Chief Operating Office	Remote
Collin Smyser	August 20, 2021	Walgreens' VP, Corporate Secretary	Remote
Steven Bernstein	September 1, 2021	Weil's 30(b)(6) witness	Remote
George Fairweather	September 9, 2021	Walgreens' CFO	London, UK
John Standley	September 9, 2021	Rite Aid's CEO	Chicago, IL
Awais Kharal	September 14, 2021	Citigroup's 30(b)(6) witness	Remote
Stefano Pessina	September 21, 2021	Walgreens' Executive Chairman, CEO	Deerfield, IL
Marco Pagni	September 23, 2021	Walgreens' Chief Legal Officer	Deerfield, IL
Timothy McLevish	September 28, 2021	Advisor to Stefano Pessina	Chicago, IL
Gerald Gradwell	September 29, 2021	Walgreens' SVP, Investor Relations	Chicago, IL
Rodney Wing	September 30, 2021	A.T. Kearney's 30(b)(6) witness	Remote
Ashish Kohli	October 1, 2021	Walgreens' VP, Investor Relations	Remote

Deponent	Date	Witness Affiliation or Title	Location
James Comitale	October 7, 2021	Rite Aid's 30(b)(6) witness	Wilmington, DE

64. Information elicited during these depositions was supportive of Lead Plaintiffs' claims. The Court favorably cited deposition transcripts on 41 separate occasions in its motion for summary judgment ruling. ECF 286, *passim*.

65. We recognize, however, that there was also information elicited during these depositions that a jury could view as supportive of Defendants' positions. Nevertheless, these depositions, and the documents discussed therein, provided Lead Counsel with a solid basis to understand the risks and strengths of the case, and on how to move forward with the litigation, including filing a partial motion for summary judgment, defending against Defendants' summary judgment motion, and preparing for trial.

F. Written Discovery

66. On September 20, 2019, Lead Plaintiffs served their First Set of Interrogatories on Defendants Pessina and Fairweather, which included 23 requests seeking and concerning information and/or documents known to Defendants or received by them, supporting Defendants' alleged misleading statements concerning the status of the FTC review.

67. On March 12, 2020, Lead Plaintiffs served their First Set of Interrogatories on Defendant Walgreens, which included four requests seeking and

concerning information relating to Walgreens' interactions with the FTC regarding the proposed Merger.

68. On December 5, 2019, Defendants Pessina and Fairweather served their responses and objections to Lead Plaintiffs' first sets of interrogatories, which identified various facts that, they argued, supported statements concerning the status of the FTC review. Defendants Pessina and Fairweather supplemented their responses and objections on September 9, 2020.

69. On April 13, 2020, Defendant Walgreens served its responses and objections to Lead Plaintiffs' first set of interrogatories, in response to which Walgreens identified various documents related to Walgreens' interactions with the FTC. Defendant Walgreens supplemented its responses and objections on July 7, 2020.

G. Expert Discovery

70. In addition to conducting comprehensive fact discovery, Lead Plaintiffs and Lead Counsel retained multiple well-qualified experts while investigating and prosecuting the case. These experts offered opinions in the areas of damages, loss causation, investor analysis and merger arbitrage, and the FTC review process. Lead Counsel assisted the experts' analysis through careful analysis of the discovery record. The expert opinions were used to support Lead Plaintiffs' Motion for Class

Certification, to oppose Defendants' motion for summary judgment, during mediation, and to prepare Lead Plaintiffs' case for trial.

71. First, Lead Plaintiffs served the following expert report in support of class certification on July 26, 2019: Bjorn Steinholt, CFA, who opined on market efficiency and a damages model.

72. Next, in connection with the substantive expert discovery phase, Lead Plaintiffs served the following expert reports on October 25, 2021:

(a) Steinholt, who opined on market efficiency, loss causation, and damages under securities laws;

(b) Steven Tenn, economist and Vice President in the Antitrust and Competition Economics Practice of Charles River Associates, who analyzed the FTC's review process of the proposed Merger, assessed the changing risks of the Merger's closure based on FTC feedback, evaluated the reasonableness of Walgreens' expectations of FTC approval at various times, and determined the consistency of Walgreens' statements about the FTC review relative to the contemporaneous factual record; and

(c) Morgan Ricks, Professor of Law and Chancellor's Faculty Fellow at Vanderbilt Law School, who opined on the likelihood of a merger's completion affecting market perception of the target company's stock, specifically focusing on the proposed Walgreens-Rite Aid Merger, the importance of disclosing relevant

information about a merger's progress, and the impact of inaccurate or incomplete information on investors.

73. In total, Lead Plaintiffs' opening expert reports encompassed 191 pages along with voluminous supporting exhibits, and cited hundreds of documents and multiple deposition transcripts.

74. Defendants also submitted one expert report on October 25, 2021: A former FTC commissioner and former college professor who opined in a 51-page report about whether, based upon his view of the custom and practice of the FTC, the FTC review process for the Merger provided a reasonable basis to believe that the transaction was on track to be approved by the FTC.

75. In response to Defendants' expert reports, Lead Plaintiffs served the rebuttal report from Steven Tenn, who responded to the former FTC commissioner on November 24, 2021.

76. Defendants also submitted two rebuttal expert reports on the same day, which totaled 59 pages:

(a) Allen Ferrell, economist and Greenfield Professor of Securities Law at Harvard Law School who responded to Mr. Steinholt's damages analysis; and

(b) the former FTC commissioner and former college professor who responded to Mr. Tenn's analysis of the FTC review process.

77. In response to Defendants' rebuttal reports, on December 13, 2021, Lead Plaintiffs submitted reply reports from Bjorn Steinholt and Steven Tenn, which totaled 77 pages. That same day, Defendants submitted the reply report from the former FTC commissioner which totaled 19 pages.

78. In addition, Lead Counsel took and/or defended the depositions of all five of these expert witnesses. The chart below identifies the expert depositions taken in the Action by deponent, date of deposition, and affiliation:

Deponent	Deposition Date(s)	Expert Affiliation
Bjorn Steinholt	October 11, 2019 and January 14, 2022	Lead Plaintiffs' expert on market efficiency, loss causation, and damages
Morgan Ricks	December 21, 2021	Lead Plaintiffs' expert on investor considerations and merger arbitrage
Steven Tenn	January 10, 2022	Lead Plaintiffs' expert on the FTC review process
Former FTC commissioner	January 13, 2022	Defendants' expert on the FTC review process
Allen Ferrell	January 18, 2022	Defendants' expert on loss causation and damages

H. The Parties' Motions for Summary Judgment

1. Lead Plaintiffs' Motion for Partial Summary Judgment

79. On January 24, 2022, Lead Plaintiffs moved for partial summary judgment as to the "in connection with" element; class wide reliance; materiality; and the falsity of two specific statements. ECF 222-223. Lead Plaintiffs' motion was supported by 114 undisputed facts and 129 exhibits. ECF 224.

80. Defendants served their opposition to Lead Plaintiffs' Motion for Partial Summary Judgment on March 14, 2022. ECF 252. Lead Plaintiffs served their reply in further support of their Motion for Partial Summary Judgment, along with an additional exhibit on April 4, 2022. ECF 262-263.

2. Defendants' Motion for Summary Judgment

81. Defendants filed their Motion for Summary Judgment on January 24, 2022. ECF 227-228. Defendants' motion was supported by a filing setting forth 228 purportedly undisputed facts pursuant to Rule 56.1, as well as 141 exhibits. ECF 229. Defendants' Motion for Summary Judgment brief contained serious arguments. More specifically, Defendants contended that: (i) the statements identified in the Complaint were non-actionable statements of opinion; (ii) Defendants did not act with scienter; (iii) the challenged statements were not actionable under the PSLRA's safe harbor; and (iv) Lead Plaintiffs lacked evidence to support loss causation and damages. ECF 228. On these issues, Defendants specifically argued that:

- "Under controlling law, statements of opinions are not false if the speaker honestly believes them . . . And to hold a company liable for statements of opinion its executives genuinely believed and accurately conveyed is extraordinarily difficult: Plaintiffs would have to show the speakers had no reasonable basis for their genuinely held views." ECF 228 at 3;

- "Plaintiffs' fraud claims fail . . . because the individual defendants believed, genuinely and with a reasonable basis, that the Merger would ultimately be approved." *Id.* at 42;

- "[Lead Plaintiffs] have not, and cannot, articulate any plausible, let alone compelling, reason ***why*** Mr. Pessina or any WBA executive would lie to prop up [Rite Aid]'s share price." *Id.* at 61;

- "Critically, Plaintiffs do not point to any 'concrete or pecuniary' personal benefit to any of the Defendants from lying about the FTC review process." *Id.* at 61-62;

- "Statements 'wherein a defendant expresses the likelihood of approval by a regulatory agency' are inherently forward-looking.'" *Id.* at 65;

- "[T]he sole evidence of loss causation and damages is based on demonstrably false and absurd facts." *Id.* at 10; and

- "As the Supreme Court and the Third Circuit have held, an 'unreasonable' expert opinion which contradicts known facts in the record is inadequate to allow a case to proceed past summary judgment." *Id.* at 8.

82. Lead Plaintiffs served their opposition to Defendants' Motion for Summary Judgment on March 14, 2022. ECF 246. Lead Plaintiffs' opposition papers included an additional statement of 344 material facts and 363 exhibits. ECF 247, 251. Lead Plaintiffs' responses to Defendants' statement of undisputed facts comprised 298 pages. ECF 250. In their opposition, Lead Plaintiffs summarized all of the evidence marshalled and gathered in discovery to argue, *inter alia*, that:

- "The discovery record plainly shows that Walgreens misled the market as to whether 'the review process was progressing better than it was' and as to the 'level of regulatory risk.'" ECF 246 at 29;

- Walgreens "does not actually identify which statements it claims are forward looking, only referencing 'several of' and 'many of' an unidentified subset . . . Nevertheless, at the pleading stage, the Court analyzed and rejected this argument too." *Id.* at 38; and

- "Plaintiffs' showing of loss causation is supported by precedent, and Walgreens' expert concedes damages exist." *Id.* at 53.

83. Defendants served their reply brief in further support of their motion for summary judgment on April 4, 2022. ECF 265. Defendants again strongly criticized the likelihood of success of these claims, writing:

- "Plaintiffs cannot evade summary judgement with post hoc inventions and evidence-free assertions of perjury that enjoy no support in the record they themselves created." ECF 265 at 4;
- "The Supreme Court has admonished that it is 'no small task' for an investor to succeed under *Omnicare*, *id.*, and the record in this case shows that Plaintiffs have not come close. . . . Plaintiffs' *Omnicare-lite* Arguments are Frivolous." *Id.* at 9, 18;
- "There is no real question that the speakers believed their publicly stated opinions." *Id.* at 18;
- "Plaintiffs cannot evade the record with nothing more than unsupported, post hoc speculation about what Defendants ***might*** have been thinking." *Id.* at 23;
- "But their scant evidence does not support ***any*** theory of scienter, let alone one that is 'cogent and at least as compelling as any opposing inference of non-fraudulent intent.'" *Id.* at 31;
- "This absence of motive means that Plaintiffs must come forward with even stronger proof of scienter to survive summary judgment. . . . But Plaintiffs do not come close." *Id.*at 37; and
- "The chronology of this case renders Mr. Steinholt's report, and by extension, Plaintiffs' theory of loss causation, entirely impossible. Put differently, Plaintiffs' chief defense to summary judgment is an expert report that has no basis in fact or logic, and the Court should not hesitate to disregard it when evaluating Defendants' motion." *Id.* at 53.

84. On April 4, 2022, Defendants filed a Motion to Strike Plaintiffs' Additional Statement of Material Facts and Certain of Plaintiffs' Responses to Defendants' Statement of Undisputed Material Facts (the "Motion to Strike"), arguing that Lead Plaintiffs' Additional Statement of Material Facts violated Local Rule 56.1. ECF 266. On April 18, 2022, Lead Plaintiffs filed their brief in opposition to Defendants' Motion to Strike. ECF 278. Defendants filed their reply brief on May 2, 2022. ECF 282.

85. While these motions – including Defendants' aggressive arguments in favor of dismissal – were all on file and pending, Lead Plaintiffs and Lead Counsel did not rush to settle or even attempt to mediate. Instead, Lead Plaintiffs and Lead Counsel were confident in the record built in discovery and took a risk by awaiting the Court's ruling.

3. The Court's Ruling on the Parties' Summary Judgment Motions

86. On March 31, 2023, the Court issued a 55-page order denying the parties' motions for summary judgment. ECF 286. The Court found that the parties' submissions evidenced a record that was "teeming with genuine disputes of material fact." *Id*. at 2 n.2. As to the parties' specific legal and factual disputes, the Court found that:

- "Plaintiffs have adduced evidence from which a jury reasonably could find these statements were misleading." ECF 286 at 32;

- "A jury resolving all factual disputes in plaintiffs' favor could find Pessina acted with intent to defraud investors." *Id*. at 45-46;

- "Defendants' principal arguments are grounded largely in their flawed view that ***all*** challenged statements are statements of pure opinion, subject only to the requirement the speaker's belief be genuine and objectively reasonable . . . that view is wrong for two reasons." *Id*. at 31;

- "[S]everal challenged statements are statements of fact, not of opinion, and even those statements that constitute opinion contain embedded facts. And as to all statements, plaintiffs have adduced evidence oppugning either the accuracy of the fact expressed or implied, or the genuineness and reasonableness of the opinion held." *Id*.;

- "Defendants ask what motive Pessina could have had for lying to the market about a deal in which he had a major pecuniary stake. Plaintiffs identify a plausible motive: assuaging anxieties in the market and among Walgreens' shareholders while buying time to find a solution to the FTC's perceived intransigence and the increasingly bleak odds of approval." *Id*. at 45;

- "A jury reasonably could draw the inferences necessary to support loss causation from Steinholt's report – the misrepresented information in Pessina's, Fairweather's, and Gradwell's statements resulted in an inflated stock price, and revelation of the true state of affairs through subsequent events caused a decline in the price. Conversely, a jury could read the corrective disclosures as narrowly as defendants do and reject that link. It is the jury and not this court that shall resolve this dispute."; *Id*. at 52-53; and

- "In light of our conclusion that the record is teeming with genuine disputes of material fact, defendants' requested relief – an order deeming virtually their entire Rule 56.1 statement admitted – is unwarranted and inappropriate. Hence, we will deny defendants' motion [to strike]." *Id*. at 2 n.2.

87. Although Lead Plaintiffs succeeded in overcoming Defendants' Motion for Summary Judgment, the Court's ruling illuminated numerous disputed issues of

material fact, which underscored the massive risk that Lead Plaintiffs faced at trial. For example, the Court noted the "manifold disputes of material fact" and explained that "[t]hese conflicting interpretations constitute quintessential disputes of fact for resolution at trial." *Id.* at 28, 37.

88. The Court also denied Plaintiffs' Motion for Summary judgment as well, ruling: "Because of the many disputes of material fact in this matter which are set forth at length in this memorandum, and the inherent and inextricable overlap between various elements of plaintiffs' claims, we will deny plaintiffs' motion." *Id.* at 53. The Court continued, "[p]articularly in a case as factually nuanced as this, severing subparts of claims very likely would undermine rather than aid trial efficiencies. We accordingly will exercise our discretion and deny plaintiffs' motion to take fragments of their claims away from the jury." *Id.* at 55. While disappointing, this ruling reaffirmed for Lead Plaintiffs and Lead Counsel that success at trial was far from guaranteed.

I. Mediation and Settlement

89. In connection with the Court's denial of the parties' cross-motions for summary judgment, the Court ordered the parties to "promptly meet and confer to discuss participating in a settlement with a United States Magistrate Judge." ECF 287 at 2. On April 19, 2023, the parties informed the Court that "we are not requesting referral to a United States Magistrate Judge for a settlement conference, but the parties

have agreed to a mediation with a prominent private mediator to take place in late July 2023." ECF 289.

90. On July 27, 2023, the parties participated in a full-day mediation in front of the Hon. Layn R. Phillips (Ret.). In advance of the mediation, the parties exchanged and submitted to Judge Phillips initial and responsive mediation statements addressing liability and damages. The mediation briefs addressed the evidence and legal arguments each side believed supported their respective claims and defenses. Although the parties did not reach a resolution that day, discussions with the assistance of Judge Phillips' office continued.

91. Following over three additional weeks of complex arm's-length negotiations, on August 20, 2023, the parties accepted a "Mediator's Recommendation" from Judge Phillips. On August 23, 2023, the parties signed a Settlement Term Sheet. The Term Sheet set forth the parties' agreement to settle and release all claims against Defendants in return for a cash payment by Defendants for $192.5 million in cash for the benefit of the Class, subject to the execution of a "long form" stipulation and settlement agreement, and related papers.

92. After execution of the Term Sheet, the parties spent additional weeks negotiating the final terms of the Settlement as embodied in the Stipulation and the exhibits thereto, and exchanged multiple drafts of the Stipulation and its exhibits. On

October 18, 2023, the parties executed the Stipulation setting forth their binding agreement to settle the Action (and superseding and replacing the Term Sheet).[4]

93. Pursuant to the payment schedule specified in ¶5.1 of the Stipulation, Defendants have already made the first cash payment of $30 million into escrow for the benefit of the Class. Defendants also agreed to make two additional cash payments of $75 million and $87.5 million on or before January 4, 2024 and March 4, 2024, respectively.

III. RISKS OF CONTINUED LITIGATION

94. Lead Plaintiffs and Lead Counsel developed a thorough understanding of the strengths and potential weaknesses of the claims. Lead Plaintiffs and Lead Counsel were preparing to try this case in front of a jury and believed that they had gathered substantial evidence to support the Class' claims.

95. Nonetheless, we recognized that Lead Plaintiffs also faced considerable challenges and defenses – both factual and legal – if the Action were to continue

[4] On October 18, 2023, the parties also entered into a confidential Supplemental Agreement setting forth the conditions under which Defendants may terminate the Settlement if the Court provided Class Members with an additional opportunity to request exclusion from the Class and the subsequent requests for exclusion reached a certain threshold. The Order Preliminarily Approving Settlement and Providing for Notice (ECF 308) did not provide Class Members with a second opportunity to request exclusion in connection with the Settlement Notice. Accordingly, the Supplemental Agreement is now moot.

through trial, as well as the inevitable appeal that would follow even if Lead Plaintiffs won a favorable verdict.

96. In sum, the Settlement provides an immediate and certain benefit to the Class in the form of $192.5 million cash payment and represents a significant portion of the recoverable damages in the Action. Lead Counsel believes that the proposed Settlement is an outstanding result for the Class considering these risks of continued litigation, some of the most serious of which are discussed below.

A. Risks Concerning Liability

97. While Lead Counsel believes that the claims asserted against Defendants in the Action are meritorious, we recognize that this Action presented several substantial risks to establishing Defendants' liability.

98. ***First***, Defendants have strenuously argued that Lead Plaintiffs could not establish the element of scienter by claiming that the evidence did not support that the allegedly misleading statements were made with the requisite intent to defraud. For example, Defendants have argued that "the individual defendants believed, genuinely and with a reasonable basis, that the Merger would ultimately be approved," and that Lead Plaintiffs "have not, and cannot, articulate any plausible, let alone compelling, reason ***why*** Mr. Pessina or any WBA executive would lie to prop up [Rite Aid]'s share price." ECF 228 at 42, 61.

99. ***Second***, Defendants have consistently argued that several of the challenged statements were inactionable under the PSLRA's safe harbor. On this issue, Defendants argued that "[s]tatements 'wherein a defendant expresses the likelihood of approval by a regulatory agency' are inherently forward-looking,'" and that "all of the [Complaint's] statements were accompanied by sufficient cautionary language . . . which explained that FTC approval was not guaranteed and that the Merger might include additional divestitures." ECF 228 at 65-66.

100. ***Third***, even if Lead Plaintiffs prevailed at trial, Lead Plaintiffs would still have to prevail on the appeals that would likely follow. At each of those stages, there are significant risks attendant to the continued prosecution of the Action, and there are no guarantees that further litigation would have resulted in a higher recovery, or any recovery at all.

101. For example, Walgreen has filed a motion for summary judgment in the opt-out cases arguing that the opt-out plaintiffs do not have standing to pursue these federal securities claims against Walgreens, a company in which Rite Aid stockholders did not invest. Lead Plaintiffs believe that such an argument is unmeritorious in the Third Circuit, *see Semerenko v Cendant Corp.*, 223 F.3d 165 (3d Cir. 2000) and ECF 223-224, but had Lead Plaintiffs prevailed at trial, Walgreens would have likely filed appeals and pursued this issue for as long as possible. A

Supreme Court ruling overturning *Semerenko*, even if unlikely, could have wiped out an entire Class-wide recovery after trial, leaving the Class with nothing.

102. ***Fourth***, Defendants' initial disclosures stated that they had no insurance available to satisfy any judgment in this case. In response to a request "for inspection and copying . . . any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment," Defendants responded, "[t]here are no such insurance agreements." As such, Lead Counsel understood that Defendants' lack of insurance coverage added to the element of risk in this case, given that any recovery would be paid directly out of Defendants' own pockets.

B. Risks Related to Damages

103. Even assuming that Lead Plaintiffs overcame each of the above risks and successfully established liability, they also faced substantial risks in proving damages and loss causation. Indeed, throughout the litigation, Defendants maintained that, even if liability were established, Lead Plaintiffs' claims did not give rise to any cognizable damages. Relatedly, Defendants contended and would have continued to argue that Lead Plaintiffs could not show loss causation to support their damages theory.

104. For example, Defendants argued that losses on all of the corrective disclosure dates were not caused by any alleged fraud because the information

disclosed on those dates "did not [yet] exist" at the time of the alleged misstatements. ECF 228 at 41. Defendants relatedly contended that the disclosures primarily represented the materialization of risks that Walgreens and Rite Aid previously and adequately disclosed both before and during the Class Period, such as the risk that the proposed Merger might not receive FTC approval. *Id.* at 60.

105. Notably, had Defendants' loss causation arguments been accepted in full or even in part at trial, damages could have been significantly reduced, or eliminated entirely. Lead Plaintiffs thus faced the prospect of advancing all the way to trial and winning the liability phase, but recovering nothing for the Class and losing the case. That is precisely what happened in both the *Trados* and *PLX* merger cases – plaintiffs proved liability in a merger trial, but the court found that damages were zero. *See In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013) (unfair sale process by fiduciaries nevertheless produced a fair price); *In re PLX Tech. Inc. Stockholders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018) (activist who aided and abetted the board's breach of fiduciary duty was not liable for any damages because the court had determined the amount of damages to be zero).

106. Moreover, even if Lead Plaintiffs were successful at trial, Defendants could have challenged the damages of each and every large Class Member in post-trial proceedings, substantially reducing any aggregate recovery by Lead Plaintiffs. And as described further below, the $192.5 million Settlement represents a substantial

percentage of damages that could be reasonably expected to be proved at trial. Particularly considering the significant litigation risks discussed above, the Settlement represents a very favorable resolution of the Action for Class Members.

107. Given the complexity of this case and the risks and delay inherent in continued litigation, the $192.5 million Settlement is an exceptional result. Taking into account that the case and its predecessor has been litigated for eight years, and the significant amount of the recovery, the Settlement here falls well within the range of reasonableness in light of the attendant risks and uncertainties of litigation, and should be finally approved.

IV. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

108. Lead Plaintiffs have proposed a Plan of Allocation to govern the method by which Class Members' claims will be calculated, and the proceeds of the Settlement will be allocated among Class Members who submit valid Proof of Claim forms and suffered economic losses because of the alleged fraud.

109. Lead Plaintiffs engaged Mr. Steinholt (whose credentials are described above) to develop the Plan of Allocation based upon the event study and analyses he performed in this Action. Mr. Steinholt employed generally accepted and widely used methodologies to determine how much artificial inflation resided in Rite Aid's stock price on each day of the Class Period. Mr. Steinholt reached this determination by measuring how much the stock price: (a) was inflated by the alleged

misrepresentations and omissions; and (b) declined as a result of disclosures that corrected the alleged misrepresentations and omissions.

110. Under the Plan of Allocation, for each Class Period purchase of Rite Aid common stock that is properly documented, a "Recognized Loss Amount" will be calculated according to the formulas described in the Notice. As set forth in greater detail in the Notice, the calculation of a Claimant's Recognized Loss Amount is based upon a formula that takes into account such information as: (a) when a Claimant's share was purchased and if and when it was sold; (b) the amount of the alleged artificial inflation per share; (c) the purchase price of the share; and (d) the purchase price minus the average closing price for Rite Aid common stock during the 90-day look-back period described in §21(D)(e)(1) of the 1934 Act. Because the alleged corrective disclosures reduced the artificial inflation in stages over the course of the Class Period, the damages suffered by any particular Claimant will vary.

111. In sum, the Plan of Allocation represents a reliable method by which to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund. To date, there have been no objections filed to the Plan of Allocation.

V. THE FEE AND EXPENSE APPLICATION

112. In addition to seeking final approval of the Settlement and approval of the Plan of Allocation, Lead Counsel is applying for an award of attorneys' fees and

payment of expenses incurred by Lead Counsel during the course of the Action. Specifically, Lead Counsel is applying for attorneys' fees in the amount of 30% of the Settlement Fund (or $57.75 million) and for litigation expenses in the total amount of $1,429,116.29, as well as interest earned thereon on both amounts, at the same rate over the same time period as the Settlement Fund. As noted above, Lead Counsel's fee and expense application is consistent with the amounts set forth in the Notice and, to date, no objections to Lead Counsel's request for attorneys' fees and expenses has been received.

113. Below is a summary of the primary factual bases for Lead Counsel's fee and expense application. A full analysis of the factors considered by courts in this Circuit when evaluating requests for attorneys' fees and expenses from a common fund, as well as the supporting legal authority, is presented in the accompanying Memorandum of Law in Support of Motion for Attorneys' Fees and Litigation Expenses and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Fee Memorandum").

A. Lead Counsel's Fee Request Is Fair and Reasonable and Warrants Approval

1. The Favorable Settlement Achieved

114. Courts have consistently recognized that the result achieved is a key factor to be considered in making a fee award. *See* Fee Memorandum, §IV.C.1. Here, the $192.5 million Settlement is of a record-breaking magnitude and provides an

immediate cash recovery to a large Class of investors. The extraordinary nature of the Settlement achieved by Lead Counsel is illustrated by the rarity of this result, across multiple metrics. The $192.5 million Settlement:

- ranks in the top 100 largest securities class action recoveries of all time, in any jurisdiction. *See* Ex. 3 hereto (ISS Securities Class Action Services, *The Top 100 U.S. Class Action Settlements of All-Time* (Dec. 31, 2022)) ("ISS Report") at 8-12;

- constitutes the largest securities class action recovery ever achieved in this District. *Id.*;

- constitutes the second largest recovery ever achieved in any Pennsylvania federal court. *Id.*;

- represents nearly 15 times the median securities class action settlement amount in 2022 of $13 million. *See* Ex. 4 hereto (Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2022 Review and Analysis* (Cornerstone Research 2023) ("Cornerstone Report") at 1 (stating that the median settlement amount for 2022 in securities class actions was $13 million)); and

- represents 18%-22.5% of Lead Plaintiffs' estimated recoverable damages at trial, based on the figures calculated by Lead Plaintiffs' damages expert and as adopted in the Plan of Allocation. This amount is many times greater than the 1.7% median percentage recovery for cases settled with estimated damages of between $500 and $999 million and the 2.2% for cases settled with estimated damages above $1 billion. *See* Ex. 4 (Cornerstone Report at 6, 14 (finding median settlements as a percentage of estimated damages was 1.7% in 2022 for cases involving estimated damages of between $500 and $999 million and 2.2% in 2022 for cases settled with estimated damages above $1 billion); Ex. 5 hereto (Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* at 17-18, Figs. 18 & 19 (NERA Jan. 24, 2023)) (noting median ratio of settlements to investor losses was 1.8% in 2022 and 1.7% for settlements of actions with investor losses between $600 and $999 million and was 1.3% for cases with investor losses between $1 billion to $4.999 billion).

115. This $192.5 million Settlement also stands as the largest securities class action recovery in history paid by a company and its executives for issuing misleading statements that impacted the stock price of a different and unaffiliated public company. This definition excludes settlement payments by auditors, banks, and insurers engaged by, or owners of, the same corporation in which the Class invested. For example, this comparison does not include the Enron Corporation ("Enron") securities settlement, where Enron's former investors received billions from Enron's own auditors and bankers. Here, in contrast, Walgreens was truly an unaffiliated third-party relative to the Class of Rite Aid investors.

116. To confirm this, I supervised a team of attorneys tasked with identifying the defendants or settlement payers in each of the cases listed in the ISS Report of the top 100 securities class action settlements of all time. Ex. 3. This project involved the review and analysis of a range of public sources, including, but not limited to, court dockets, media and news articles, law firms' websites, and specialized legal databases including the Stanford Law School Securities Class Action Clearinghouse. For each of the cases listed in the report, our team worked to identify which person(s) or entities provided for the payment(s) of that particular recovery, as well as the particular structure of the defendants relative to the class of investors. Following this comprehensive review, we were able to confirm that the Settlement in this Action is indeed the largest securities class action recovery in history paid by a company and its

executives for issuing misleading statements that impacted the stock price of a different and unaffiliated public company.

117. The settlement with a structure most similar to this Action involved the $26 million resolution following the Third Circuit's decision in *Semerenko v. Cendant Corp.*, 223 F.3d 165 (3d Cir. 2000). Like here, *Semerenko* involved claims under §10(b) and Rule 10b-5 brought by investors in a target company (American Bankers Insurance Group, Inc. ("ABI")) impacted by the misleading statements of an acquirer (Cendant Corporation ("Cendant")) during the pendency of a failed merger. *Id.* After the Third Circuit reversed a motion to dismiss ruling, the class of ABI stockholders obtained a $26 million settlement from Cendant and Cendant's accountant, Ernst & Young, in July 2006. *See P. Schoenfeld Asset Mgmt. LLC v. Cendant Corp., et al.*, No. 2:98-cv-04734-WHW-MAH (D.N.J.) at ECF 132-1 (identifying $26 million combined settlement amount); ECF 129 (approving Cendent settlement); ECF 140 (approving Ernst & Young settlement); ECF 138 (awarding 30% in attorneys' fees).

118. One identified case that was close, but did not involve claims within the paradigm of this Action, was *In re Allergan, Inc. Proxy Violation Sec. Litig.*, No. 8:14-cv-02004-DOC-KESx (C.D. Cal. 2018). In that case, the plaintiffs sold Allergan, Inc. ("Allergan") common stock and brought claims against Valeant Pharmaceuticals International, Inc. ("Valeant") and Pershing Square Capital Management, L.P. ("Pershing Square") for violating §14(e) and Rule 14e-3 of the

1934 Act, "which prohibits trading while in possession of nonpublic material information in connection with a tender offer." *Id.*; ECF 102 at 5; *see also id.*, ECF 60. As part of the settlement, Valeant agreed to pay $96 million and Pershing Square agreed to pay $195 million to the class of Allergan stock sellers.[5] Unlike this Action, *Allergan* primarily involved claims of insider trading based on nonpublic information about an upcoming tender offer, rather than open market securities claims based on misleading public statements that impacted another company's stock (as here).

119. In addition, the $300 million settlement in *DaimlerChrysler AG* in the District of Delaware in 2003 also represents a similar structure to the definition above, but the settlement was ultimately paid by an affiliated company. *See In re DaimlerChrysler AG Securities Litigation*, No. 00-993 (D. Del). In 1998, Chrysler and Daimler-Benz entered into a merger agreement to form DaimlerChrysler.[6] The plaintiffs alleged, on behalf a class partially including former Chrysler shareholders that received DaimlerChrysler stock in the merger, that Daimler-Benz made misrepresentations about the merger, including in the merger proxy statement and prospectus issued by both companies. *Id.* at 2. According to the settlement notice, "Lead Plaintiffs contend that they and the other members of the Class were damaged

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5 *See* https://www.sec.gov/Archives/edgar/data/885590/000088559018000029/valeantq12018.htm at 37-38.

6 *See* https://securities.stanford.edu/filings-documents/1016/DCX00/20031006_r01s_00993.pdf.

as a result of the alleged misrepresentations and omissions in that they were entitled to a control premium for their Chrysler shares, as is typically afforded in acquisitions, and/or overpaid for DaimlerChrysler stock purchased after the Merger on the open market." *Id.* at 3. While similar to this Action, the settlement payment in that case was ultimately made by the combined merger entity, *i.e.*, the recovery was not paid by an unaffiliated company that never merged (like here). In addition, the plaintiffs' pre-merger-related claims in *DaimlerChrysler* do not appear to be based on an impact to pre-merger Chrysler shares in the open market, but instead focused on the merger price and the lack of a control premium. *Id.* Also of note, the $490 million settlement in *In re BankAmerica Corp. Securities Litigation*, MDL No. 1264 (SRC) (E.D. Mo. 2004) and the $2.65 billion settlement in *In re AOL Time Warner, Inc.*, 2006 WL 903236 (S.D.N.Y. Apr. 6, 2006) involved a structure similar to *DaimlerChrysler AG* and were largely paid by the post-merger entity.

2. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Cases

120. The years of extensive fact and expert discovery, and motion practice, presented obstacles that Lead Counsel overcame. In order to secure this recovery, Lead Counsel analyzed a large quantity of complex documents concerning the highly detailed and nuanced antitrust review of a multi-billion dollar merger; secured key admissions on these complex issues in depositions; and used the fact and expert

discovery record to assemble a compelling presentation of evidence at summary judgment.

121. As set forth in the accompanying memorandum, the risks faced by Lead Counsel in prosecuting this Action are relevant to the Court's consideration of an award of attorneys' fees, as well as its approval of the Settlement. Here, Defendants adamantly denied, and continue to deny, any wrongdoing and, if the Action had continued, would have aggressively litigated their defenses through trial, and the appeals that would inevitably follow. As detailed in §III above, Lead Counsel and Lead Plaintiffs faced significant risks to proving Defendants' liability, loss causation, and damages at all remaining stages of this litigation.

122. As described above, this was not a typical case in terms of the risk undertaken by Lead Counsel. And Defendants' counsel exhausted every possible strategy in an effort to end the Action without any recovery for the Class. Lead Counsel still did not rush to settle this case. The first and only mediation in this Action was actually ordered by the Court and did not occur until August 2023, well over seven years after Lead Counsel filed the related case. Unlike defense counsel, who are paid on an hourly rate and reimbursed their expenses on a regular basis, Lead Counsel have not been compensated for any time or expense since this case and its predecessor began.

123. While the Settlement represents an impressive recovery for the Class, this result was far from guaranteed, nor was it even remotely foreseeable to other members of the plaintiffs' bar. At this Action's inauspicious beginning, no other law firm even attempted to file a similar case. Lead Counsel accepted the representation on a contingent basis in a securities fraud class action wherein, even if a recovery was obtained, any payment for Lead Counsel's services was likely to be delayed for several years.

124. When committing over 31,400 hours of attorney time and incurring over $1.4 million in expenses while litigating this Action, Lead Counsel fully assumed the risk of an unsuccessful result. Lead Counsel have received no compensation for their services during the course of this Action and any fees awarded to Lead Counsel have always been at risk and are completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result for the Class.

125. Lead Plaintiffs continued to face massive risk at trial. A three-week jury trial involving a complicated subject matter, where many issues would be resolved through a "battle of the experts," is a most uncertain endeavor. In addition, most of the fact witnesses in this case were employed by Walgreens or were well-compensated advisors of Walgreens. And there are scores of lawsuits where – because of changes in the law during the pendency of the case, or a decision of a jury following a trial on

the merits, or a reversal on appeal – similarly long and hard-fought litigation efforts resulted in no fees, and massive expenses, for plaintiffs' counsel to bear. These cases include some that were litigated by the undersigned Lead Counsel. Indeed, the following cases provided examples where the same team of Robbins Geller attorneys litigating this case also litigated cases at least through summary judgment or trial, but lost:

- *Laborers' Loc. #231 Pension Fund v. Cowan*, 2020 WL 1304041 (D. Del. Mar. 19, 2020) (motion for summary judgment granted after years of fact and expert discovery, dismissing 1934 Act claims regarding a merger, later affirmed by the Third Circuit);

- *In re PLX Tech. Inc. Stockholders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018) (post-trial ruling where the trial court found liability for aiding and abetting a breach of fiduciary duty, but the trial court ruled in favor of the defendant after finding that the plaintiffs had failed to prove damages, a decision affirmed over a year later by the Delaware Supreme Court);

- *Air Prods. & Chems., Inc. v. Airgas, Inc.*, 16 A.3d 48 (Del. Ch. 2011) (after a week-long trial in October 2010 and subsequent three-day evidentiary hearing in January 2011, the court ruled in favor of the defendants, denied the shareholder plaintiffs' request for relief, and dismissed the case with prejudice); and

- *Elloway v. Pate*, 238 S.W.3d 882, 889 (Tex. App. 2007) (the trial court entered a take nothing judgment, which the Court of Appeals of Texas affirmed, after a three-week jury trial in the Texas District Court of Harris County).

126. In *Cowan*, for example, Lead Counsel brought claims under §14(a) of the 1934 Act regarding the $356 million merger of Lionbridge and HIG. After surviving the defendants' motion to dismiss, the case proceeded to extensive discovery, much

like this Action. *Id.* The defendants filed their motion for summary judgment shortly after the close of that very lengthy and costly discovery process. *Id.* at *1. The court granted the motion and entered a judgment in favor of the defendants. *Id.* at *5. The court found, in part, that "the Lionbridge directors uniformly testified that they believed the [fairness] opinion was a positive reason supporting their decision to recommend the merger notwithstanding the fact that the projections on which [the bankers] relied did not account for future acquisitions." *Id.* at *3. The decision was later upheld by the Third Circuit. *Laborers Local No. 231 Pension Fund v. Cowan*, 837 F. App'x 886, 893 (3d Cir. 2020). As noted above, Defendants put forth very similar arguments here regarding their purported belief in the accuracy of what they publicly stated about the FTC review. *Supra*, ¶¶81, 83. *Cowan* illustrates the very real risk that Lead Counsel faced in this Action.

127. On the other hand, that same team of Robbins Geller attorneys have taken merger-related shareholder class action cases to trial and won. *See, e.g.*, *In re Rural Metro Corp. Stockholders Litig.*, 88 A.3d 54 (Del. Ch. 2014); *In re Dole Food Co.*, 2015 Del. Ch. LEXIS 223 (Del. Ch. Aug. 27, 2015). The fact that Defendants and their counsel know that the leading members of the plaintiffs' bar are able to, and will, go to trial even in large, complex, and high-risk cases gives rise to meaningful settlements in actions like this one.

128. The losses suffered by class counsel in other actions where insubstantial settlement offers were rejected, and where class counsel ultimately received little or no fee, should not be ignored. The undersigned counsel knows from personal experience that despite the most vigorous and competent of efforts, attorneys' success in contingent litigation is never assured.

3. The Time and Labor Devoted to the Action by Lead Counsel

129. Lead Counsel invested over 31,400 hours of attorney and support staff time over the course of eight years and incurred over $1.4 million in expenses prosecuting this case for the benefit of the Class. *See* accompanying Declaration of David A. Knotts Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Fee and Expense Decl."), ¶¶4-5.

130. As more fully described above, Lead Counsel: (i) conducted an exhaustive investigation into the Class' claims; (ii) researched and prepared a detailed complaint; (iii) successfully opposed Defendants' motion to dismiss; (iv) served document requests, interrogatories on Defendants, and engaged in numerous meet and confers regarding the scope of the discovery requested and the objections thereto; (v) reviewed and analyzed the resulting productions of more than 972,258 pages of documents produced from Defendants and 8 third parties; (vi) responded to Defendants' document requests and interrogatories; (vii) conducted extensive expert

discovery, consisting of the retention of three experts, who produced reports and sat for depositions that Lead Counsel defended, and the taking of depositions of Defendants' two retained experts; (viii) successfully moved for class certification; (ix) defeated Defendants' motion for summary judgment; and (x) prepared for and engaged in settlement negotiations with Defendants, including one formal mediation session. Lead Counsel advanced the litigation to achieve the most successful outcome for the Class, whether through settlement or trial, by the most efficient means possible.

131. Cases of this magnitude, and securities cases overall, are not frequently litigated to this stage of litigation. One recent study found that 86% of securities class actions were resolved before a summary judgment motion was even filed. *See* Cornerstone Report at 14 (finding that "14% of 2022 settled cases were resolved after a summary judgment motion").

132. The time devoted to this Action by Lead Counsel is set forth in the Robbins Geller Fee and Expense Declaration. Included with the Robbins Geller Fee and Expense Declaration are schedules that summarize the time expended by the attorneys and professional support staff employees at Lead Counsel, as well as expenses ("Fee and Expense Schedule"). The Fee and Expense Schedule reports the amount of time spent by each attorney and professional support staff employee who

worked on the Action and their resulting "lodestar," *i.e.*, their hours multiplied by their current hourly rates.

133. The hourly rates of Lead Counsel here range from $765 to $1,200 per hour for partners, $440 to $685 per hour for associates, and $295 to $395 per hour for paralegals. *See* Robbins Geller Fee and Expense Decl., Ex. A. These hourly rates are reasonable for this type of complex litigation.

134. In total, from the inception of this Action through August 22, 2023 – the date before the execution of the Term Sheet – Lead Counsel expended over 31,400 hours (after reductions) on the investigation, prosecution, and resolution of the claims against Defendants, for a total lodestar of $18,256,347.50.

135. Lead Counsel will continue to perform legal work on behalf of the Class should the Court approve the Settlement. Additional resources have been and will be expended by Lead Counsel assisting Class Members with their Claim Forms and related inquiries and working with the Claims Administrator, Gilardi, to ensure the smooth progression of claims processing. Lead Counsel will seek no additional legal fees for this work. For example, one Court recently commended Robbins Geller's post-settlement work in another matter as follows: "Class Counsel deserves credit for their assiduousness in working through these challenges. Class Counsel received an award of fees and expenses based on the benefits they conferred in the litigation. That award did not take into account the subsequent burdens associated with a lengthy

period of settlement administration." *In re PLX Tech. Inc. Stockholders Litig.*, 2022 WL 1133118, at *1 (Del. Ch. Apr. 18, 2022).

4. The Quality of Lead Counsel Representation

136. The skill and diligence of Lead Counsel also supports the requested fee. As demonstrated by the firm résumé included as Exhibit G to the Robbins Geller Fee and Expense Declaration, Lead Counsel is an experienced and skilled law firm in the securities litigation field, with a long and successful track record of representing investors in such cases. The substantial result achieved for the Class here reflects the superior quality of this representation.

137. As noted, this was a unique case and Lead Counsel had to develop the strategy, evidence, and theories of liability from scratch. *See, e.g.*, Ex. 1. Walgreens used this unusual paradigm to argue at the outset of this case (and repeatedly thereafter): "The alleged fraudulent scheme appears pointless and the question 'why?' leaps off every page of the Complaint." ECF 39 at 1. Walgreens described the claims as a "nonsensical fraud," an "irrational fraud perpetrated without motive," and an "invention of Plaintiffs' counsel." ECF 49 at 5-7.

138. Gathering the evidence proving these claims was not easy, but Lead Counsel developed and executed a discovery plan that provided immense returns for the Class. *See supra*, ¶¶28-64. This case involved alleged misrepresentations by Walgreens' executives about the status and progress of the FTC antitrust review of a

multi-billion dollar merger. Lead Counsel initially suspected, therefore, that the key evidence in this case might be shrouded under claims of attorney-client privilege and work product. And that is exactly what happened. In discovery, Lead Counsel uncovered that Defendants had redacted and withheld over 17,000 documents on purported grounds of privilege, or about 20% of their combined production in the Action.

139. After Lead Counsel's extensive meet-and-confer efforts regarding those documents proved unsuccessful, Lead Counsel sought court intervention. The ensuing discovery process involved five contested rulings from this Court on a variety of issues. *Id.* The most significant such ruling involved a finding that Walgreens waived its attorney-client privilege and an order that "Defendants shall produce and un-redact all documents containing information or analysis regarding the status of the FTC review process." ECF 135 at 15. Walgreens vigorously opposed that motion, arguing that it was a "lawless request." *Id.* at 3. Lead Counsel also prevailed on a motion to quash, which allowed Lead Plaintiffs to obtain documents from, and depose, Walgreens' outside antitrust counsel. That motion was also fiercely contested.

140. As noted above, Exhibit 2 (hereto) contains a redacted version of the Factual Background from the Court's summary judgment ruling, which illustrates the more limited evidentiary record that would have been available to support these claims at summary judgment and/or trial had Lead Counsel not litigated and prevailed

on the Motion to Compel and Motion to Quash. Ex. 2. Those discovery efforts had a clear, direct, and favorable impact on the evidentiary record and corresponding value of this case for the Class. *Id.*

141. As a result of Lead Counsel's gathering and presentation of a massive factual record, on March 31, 2023, the Court denied Defendants' motion for summary judgment. Underscoring the risks in this case, the Court denied Lead Plaintiffs' concurrent motion for summary judgment as well. The Court set this matter for trial commencing on January 29, 2024. ECF 292. Lead Counsel then conducted arm's-length settlement negotiations, while preparing for trial.

142. The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Lead Counsel. Defendants were represented by attorneys from Weil and Buchanan Ingersoll & Rooney PC, prominent and experienced law firms. Lead Plaintiffs also obtained valuable and sensitive documents over the strenuous objections of multiple third parties represented by some of the largest defense firms in the world, including Skadden, Arps, Slate, Meagher & Flom LLP; Shearman & Sterling LLP; Hogan Lovells; and White & Case LLP. The ability of Lead Counsel to obtain such a favorable settlement for the Class in the face of such formidable opposition further confirms the superior quality of the representation.

B. Lead Counsel's Request for Litigation Expenses Warrants Approval

1. Lead Counsel Seeks Payment of Lead Counsel's Reasonable and Necessary Litigation Expenses from the Settlement Fund

143. Lead Counsel seeks payment from the Settlement Fund of $1,429,116.29 for expenses, costs, and charges that were reasonably and necessarily incurred by Lead Counsel in connection with the Action. The Notice informed the Class that Lead Counsel will apply for payment of litigation expenses in an amount not to exceed $1.9 million. The amount of litigation expenses requested by Lead Counsel is therefore substantially below the maximum expense amount set forth in the Notice.

144. From the inception of this Action, Lead Counsel was aware that it might not recover any of the expenses it incurred in prosecuting the claims against Defendants and, at a minimum, would not recover any expenses until the Action was successfully resolved. Lead Counsel also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate counsel for the lost use or opportunity costs of funds advanced to prosecute the claims against Defendants.

145. Lead Counsel were motivated to, and did, take appropriate steps to avoid incurring unnecessary expenses and to minimize costs without compromising the vigorous and efficient prosecution of the Action.

146. To provide one such example, Lead Counsel maintained strict control over the expenses in this Action by leanly staffing depositions to avoid excess travel and redundant efforts. Of the 15 in-person fact witness depositions taken in this case, only three were attended by more than one attorney from Lead Counsel, and whenever feasible, Lead Counsel agreed to take depositions remotely via Zoom. In contrast, Defendants' counsel – whose costs were likely being reimbursed monthly or quarterly on a non-contingent basis – adopted a different cost strategy, deploying multiple attorneys to attend all but one of the 15 in-person fact-witness depositions taken in this case.

147. Lead Counsel's expenses are summarized in the Robbins Geller Fee and Expense Declaration, which identify each category of expense and the amount incurred for each. Lead Counsel's expenses include charges for, among other things: (i) experts in connection with various stages of the litigation; (ii) establishing and maintaining a database to house the thousands of documents produced in discovery; (iii) deposition-related expenses; (iv) online factual and legal research; (v) mediation; and (vi) photocopies. Courts have consistently found that these kinds of expenses are payable from a fund recovered by counsel for the benefit of a class.

148. The largest component of Lead Counsel's expenses (*i.e.*, $911,914.00 or approximately 64% of their total expenses) was incurred for experts and consultants. Lead Counsel retained three expert witnesses and two highly-qualified consultants:

(a) Caliber Advisors, Inc. (Bjorn Steinholt): Mr. Steinholt is a CPA and managing director at Caliber Advisors, Inc., with over 25 years of experience providing capital markets consulting, including analyzing and valuing investments. Lead Counsel retained Mr. Steinholt to opine and testify on issues relating to market efficiency, loss causation, and damages under securities laws.

(b) Charles River Associates (Steven Tenn): Mr. Tenn is an economist and vice president in the Antitrust and Competition Economics Practice of Charles River Associates, with over 20 years of experience analyzing mergers across a wide range of industries, including engagements where he consulted or served as an expert witness for a government agency or private companies. Lead Counsel retained Mr. Tenn to analyze the FTC's review process of the proposed Merger, assess the changing risks of the Merger's closure based on FTC feedback, evaluate the reasonableness of Walgreens' expectations of FTC approval at various times, and determine the consistency of statements in the Complaint with the actual FTC review records available to Defendants.

(c) Morgan Ricks: Mr. Ricks is a professor of law and chancellor's faculty fellow at Vanderbilt Law School with several years of experience working as an investment professional specializing in merger arbitrage. Lead Counsel retained Mr. Ricks to opine on how the likelihood of a merger's completion affects market perception of the target company's stock, specifically focusing on the proposed

Walgreens-Rite Aid Merger, the importance of disclosing relevant information about a merger's progress, and the impact of inaccurate or incomplete information on investors.

(d) Matthew D. Cain, Ph.D.: Dr. Cain is a Senior Fellow, Berkeley Center for Law and Business, University of California, Berkeley and has a Ph.D. in finance. Dr. Cain is an expert in securities litigation, corporate disclosures, M&A litigation, private equity, valuation, insider trading, and corporate governance. Here, Dr. Cain provided non-testifying consulting analysis regarding loss causation and damages under the securities laws.

(e) RGL, Inc.: RGL, Inc., through CPA Matthew Morris, provided Lead Counsel with detailed analysis and assistance on issues relating to the value of Rite Aid common stock, the fairness opinions of Rite Aid's financial advisors, and the valuation impact and reliability of various financial projections in the record.

149. These experts and consultants were essential to the prosecution of the Action.

150. Another significant expense (*i.e.*, $41,759.54) was incurred for legal and factual research. This amount includes charges for computerized research services such as Westlaw and PACER. It is standard practice for attorneys to use online services to assist them in researching legal and factual issues, and indeed, courts

recognize that these tools create efficiencies in litigation and ultimately save money for clients and the class.

151. Lead Counsel also incurred a total of $84,204.70 for document hosting and management/litigation support.

152. The other expenses for which Lead Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others: class action notices/business wire ($162,634.32); deposition transcripts, videography, and court hearing transcripts ($120,692.87); transportation, hotels, and meals ($51,274.44); and copying ($9,455.35). All of the litigation expenses incurred by Lead Counsel were reasonable and necessary to the successful litigation of the Action, and are described in more detail in the Robbins Geller Fee and Expense Declaration.

2. Reimbursement to Lead Plaintiffs Is Fair and Reasonable

153. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Accordingly, Lead Plaintiffs seek reimbursement of their reasonable costs incurred directly for their work supervising counsel and participating in the litigation in the aggregate amount of $50,000. *See* Chabot Decl., ¶¶6-11; Dayton Decl., ¶¶6-12.

154. As discussed in the Fee Memorandum and in Lead Plaintiffs' supporting declarations, each Lead Plaintiff has been fully committed to pursuing the Class' claims since they became involved in the litigation. Lead Plaintiffs have provided valuable assistance to Lead Counsel during the prosecution and resolution of the Action. Moreover, the efforts expended by Lead Plaintiffs during the course of this Action, as set forth in Lead Plaintiffs' declarations submitted herewith, including communicating with Lead Counsel, reviewing pleadings and motion papers, gathering and reviewing documents in response to discovery requests, preparing for deposition and being deposed, and participating in the settlement negotiations, are precisely the types of activities courts have found to support reimbursement to class representatives, and fully support the request for reimbursement here.

VI. CONCLUSION

155. For all the reasons set forth above, Lead Counsel respectfully submits that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Lead Counsel further submits that the requested fee in the amount of 30% of the Settlement Fund should be approved as fair and reasonable, and the

request for Lead Counsel's litigation expenses in the amount of $1,429,116.29, and Lead Plaintiffs' awards in the total amount of $50,000, should also be approved.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed in San Diego, California this 3rd day of January, 2024.

DAVID A. KNOTTS

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 3, 2024, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ David A. Knotts

DAVID A. KNOTTS

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Mailing Information for a Case 1:18-cv-02118-JPW Chabot et al v. Walgreens Boots Alliance, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **A. Rick Atwood , Jr**
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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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Mason Capital Master Fund, L.P.
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Recovery Master, LLC
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INDEX OF EXHIBITS TO DECLARATION OF DAVID A. KNOTTS IN SUPPORT OF SETTLEMENT MOTIONS

EXHIBIT 1

30 No. 08 Westlaw Journal Mergers and Acquisitions 05

February 25, 2020

Alison Frankel's On the Case

Westlaw Journal Mergers & Acquisitions
By Alison Frankel[aa1]

Judge certifies unusual class of Rite Aid investors to sue Walgreens over busted merger

Briefs and Other Related Documents

(Reuters) – On Jan. 21, U.S. District Judge John Jones of Harrisburg, Pennsylvania, certified an unusual class of Rite Aid shareholders to proceed with securities fraud claims against Rite Aid's failed merger partner Walgreens and two then-Walgreens officers.

The class action alleges that Walgreens and the executives deceived Rite Aid investors when they offered assurances that the drugstore chains' merger, announced in October 2015, would survive antitrust review when they knew that the Federal Trade Commission had issues with the merger.

In June 2017, after years of regulatory pushback and one major revision of the merger agreement, the companies dropped the deal. Rite Aid investors, represented by Robbins Geller Rudman & Dowd, claim Walgreens is responsible for artificially inflating the share price of its erstwhile merger partner.

Walgreens, represented by Weil Gotshal & Manges, argued in a motion to dismiss the case that the company and its executives believed their predictions that the deal would pass FTC muster and did not act with fraudulent intent. Judge Jones denied that motion in April 2019. *Chabot v. Walgreens Boots Alliance Inc.*, No. 18-cv-2118, 2019 WL 2992242 (M.D. Pa. Apr. 15, 2019).

There are a lot of strange things about the Rite Aid case, not least that Walgreens did not oppose certification of the class. Walgreens' response to the plaintiffs' motion to certify the class is sealed, but according to a public, Jan. 16 filing by class counsel at Robbins Geller, the company's filing addressed only the adequacy of one of the three proposed class representatives — not the certification of the class or the appointment of Robbins Geller as class counsel.

Robbins Geller told Judge Jones in that Jan. 16 filing that it had agreed to drop the contested class rep from the case. The judge's bare-bones Jan. 21 order certified the class with the other two proposed class representatives as lead plaintiffs.

But that's just the beginning of this case's oddities. Shareholder litigation over the merger between Rite Aid and Walgreens began with investors asserting claims back in 2015, when the deal was first announced, against both companies.

In 2018, after the merger was called off, Judge Jones tossed all claims against Rite Aid (331 F.Supp.3d 412), holding that only a few statements by Walgreens executives were actionable. *Hering v. Rite Aid Corp.*, 331 F. Supp. 3d 412 (M.D. Pa. 2018).

But that left shareholders in a pickle because the lead plaintiff in the case bought his Rite Aid shares before any of those statements.

The judge eventually dismissed the case as moot because the lead plaintiff didn't have standing — but said shareholders could refile a new class action, with new class representatives who traded stock during the time period affected by the alleged misrepresentations. The Jan. 21 class certification ruling came in the refiled case.

It's extremely rare for shareholders of one company to sue another corporation and its executives for allegedly defrauding them. The theory seems to raise questions about the premise of shareholder class actions, in which the Supreme Court has instructed judges, in 1988's *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), to presume that investors in an efficient market relied on corporate misstatements, freeing shareholders from the obligation of proving individual reliance.

Does the *Basic* presumption apply to alleged misstatements by executives from other corporations? I suppose we'll have to wait for a summary judgment brief from Walgreens to find out.

Class counsel David Knotts and Randall Baron of Robbins Geller didn't immediately respond to my email request for comment. Walgreens counsel Jonathan Polkes and Caroline Zalka declined to provide a statement.

Briefs and Other Related Documents (Back to Top)
2019 order: 2019 WL 2992242
2018 order: 331 F. Supp. 3d 412

Footnotes

aa1 **Alison Frankel** updates her blog, "On the Case," multiple times throughout each day on Thomson Reuters Westlaw's Practitioner Insights. A founding editor of Litigation Daily, she has covered big-ticket litigation for more than 20 years. Frankel's work has appeared in The New York Times, Newsday, The American Lawyer and several other national publications. She is also the author of "Double Eagle: The Epic Story of the World's Most Valuable Coin."

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EXHIBIT 2

I. Factual Background & Procedural History[2]

A. Initial Merger Agreement

Walgreens and Rite Aid announced their intended merger on October 27, 2015. (See Doc. 231 ¶ 6). Under the initial merger agreement, Walgreens would purchase all of the outstanding shares of Rite Aid for $9.00 a share, a 48% premium on the prior day's closing price. (See id.) The transaction valued Rite Aid, which

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[2] Local Rule 56.1 requires a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 be supported "by a separate, short, and concise statement of the material facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue to be tried." M.D. PA. L.R. 56.1. A party opposing a motion for summary judgment must file a separate statement of material facts, responding to the numbered paragraphs set forth in the moving party's statement and identifying genuine issues to be tried. Id. Unless otherwise noted, the factual background herein derives from the parties' Rule 56.1 statements of material facts. (See Docs. 231, 237, 242-2, 245-1). To the extent the parties' statements are undisputed or supported by uncontroverted record evidence, the court cites directly to the statements of material facts.

In addition to providing responses to defendants' statements of fact, plaintiffs filed a document styled as "Additional Statement of Material Facts." (See Doc. 242-3). Defendants move to strike this document and request that the court deem their own Rule 56.1 statement unopposed; defendants contend plaintiffs' additional statement is not authorized by Rule 56.1, and their responsive statement violates Rule 56.1's requirement that such statements, like opening Rule 56.1 statements, be "short and concise." (See Doc. 266). As for the additional statement, neither Federal Rule of Civil Procedure 56 nor Local Rule 56.1 authorizes this filing, and plaintiffs did not request leave of court therefor. We thus decline to accord this document the weight contemplated by Rule 56.1. See Barber v. Subway, 131 F. Supp. 3d 321, 322 n.1 (M.D. Pa. 2015) (Conner, C.J.); see also Rau v. Allstate Fire & Cas. Ins. Co., 793 F. App'x 84, 87 (3d Cir. 2019) (nonprecedential) (citing with approval, *inter alia*, Barber, 131 F. Supp. 3d at 322 n.1, in holding district courts enjoy wide discretion in interpreting their local rules). Turning to the responsive Rule 56.1 statement, we agree the filing at times runs afoul of Rule 56.1's spirit. Nonetheless, we have examined the entire Rule 56 record, including plaintiffs' additional statement. In light of our conclusion that the record is teeming with genuine disputes of material fact, defendants' requested relief—an order deeming virtually their entire Rule 56.1 statement admitted—is unwarranted and inappropriate. Hence, we will deny defendants' motion.

operated 4,561 stores in 31 states but was struggling under the weight of its debts, at approximately $17.2 billion. (See id. ¶¶ 5-6, 23).

Walgreens, Rite Aid, and the larger financial community recognized from the outset Walgreens taking possession of Rite Aid's entire store catalogue would create regulatory challenges with the Federal Trade Commission ("FTC"), whose approval was a prerequisite to closing the deal. (See id. ¶¶ 12-16, 65). Accordingly, Walgreens hired Weil, Gotshal & Manges LLP ("Weil") to assist in shepherding the transaction through the approval process. (See id. ¶¶ 29, 64-65). Before the merger was announced, Weil advised Walgreens [redacted] (See Doc. 234-4 at slide 12). Nonetheless, [redacted] (See id.)

The companies wrote several contingencies into the merger agreement in anticipation of the regulatory approval process, three of which are especially relevant here. First, the agreement set a completion deadline of October 27, 2016; if the deal did not close by that date, the agreement would terminate automatically, unless the delay was due to the regulatory process, in which case either company could unilaterally extend the deadline to January 27, 2017. (See id. ¶ 18). Second, the agreement authorized Walgreens to sell off (divest) up to 1,000 Rite Aid stores to accommodate anticipated FTC antitrust concerns, and to terminate the agreement should the FTC require a larger divestiture. (See id. ¶ 19). Third, Walgreens agreed

to pay Rite Aid a breakup fee of $325 million should the merger agreement be terminated due to FTC approval problems. (See id. ¶ 20).

When the merger was announced, Walgreens and Rite Aid publicly expressed confidence the deal would ultimately meet with regulatory approval. (See, e.g., id. ¶ 25 (Rite Aid Form 8-K reported the two companies "had extensive consultation with anti-trust counsel, and based upon the complementary nature of the market profiles of both companies, and the amount of pharmacy counters in the U.S., [they did] not believe the combination should cause regulatory concern")). The companies also announced they believed the transaction would "close in the second half of calendar 2016." (See id. ¶ 7). By the end of business on October 27, 2016, Rite Aid stock was selling for $8.67 per share, an increase of $2.59 per share or 42.6% from the prior day's closing price of $6.08. (See Doc. 238-1 ¶ 37 & n.42).[3]

The companies initiated the FTC approval process on November 10, 2015. (See Doc. 231 ¶ 68). Weil took the lead in all of Walgreens' interactions with the agency, meeting with FTC staff on numerous occasions, exchanging hundreds of emails and phone calls, submitting dozens of white papers, and disclosing millions of pages of documents. (See, e.g., id. ¶¶ 64, 66-67, 70, 84). Weil also regularly updated Walgreens' executives and board of directors on the progress of

[3] Our knowledge of the fluctuations in Rite Aid's stock price comes from the reports filed by the parties' financial experts, Allen Ferrell and Bjorn Steinholt. (See Docs. 234-98, 238-1, 238-2). The parties raise various challenges to one another's experts, but no one disputes the accuracy of the stock prices utilized by Ferrell and Steinholt in their analyses.

discussions with FTC staff, working hand-in-hand with Walgreens to address the FTC's purported concerns. (See e.g., id. ¶¶ 65, 70-71, 75, 80).

Several individuals emerge as important figures in the negotiations, correspondence, and public statements surrounding the merger. They include named defendants Stefano Pessina, Walgreens' Chief Executive Officer, Executive Vice Chairman of the Board, and largest shareholder; and George Fairweather, Walgreens' Global Chief Financial Officer; as well as Gerald Gradwell, Senior Vice President for Investor Relations; Marco Pagni, Walgreens' General Counsel; and Mark Vainisi, Walgreens' head of mergers and acquisitions. (See id. ¶¶ 2-4, 42-43). Vainisi oversaw the team within Walgreens charged with effectuating the merger, (see Doc. 239-129, Vainisi Dep. 12:4-15; Doc. 234-12, Pagni Dep. 81:8-12, 84:7-13), and Pagni describes himself as serving as "consigliere" to Pessina and the Walgreens board, remaining "close to the [merger] process" and offering legal guidance throughout, (see Pagni Dep. 84:13-17). Rite Aid's CEO, John Standley, also played a significant role in the merger. (See, e.g., Doc. 231 ¶¶ 95, 171, 189). The most prominent Weil attorneys involved in the approval process were Steven Newborn and Steven Bernstein. (See e.g., id. ¶¶ 33, 161, 185, 206, 213; Pagni Dep. 29:16-22, 128:11-17). Weil's primary contacts at the FTC in turn were Michael Moiseyev, Acting Director of the Bureau of Competition's Mergers I division, and Steven Mohr, staff attorney for the Mergers I division. (See Doc. 231 ¶ 64).

B. Divestiture & "Plan B"

At the outset, Weil identified [redacted]

[redacted] (See id. ¶ 70; Doc. 234-25 at slide 7) [redacted] (See Doc. 231 ¶ 70). On August 17, 2016, Weil presented a possible solution to FTC staff regarding their localized concerns. (See Doc. 231 ¶ 75; see also Doc. 234-32). Under the proposal, Walgreens would invoke the merger agreement's divestiture clause and sell off approximately 600 Rite Aid stores to a third-party buyer, thereby keeping the stores in competition with Walgreens' existing stores in those locations. (See Doc. 231 ¶ 76).

Weil initially [redacted] (See id. ¶ 77; see also Doc. 234-32 at slides 4, 11). Weil believed [redacted] (See, e.g., Doc. 239-174; Pagni Dep. 32:15-34:18; Vainisi Dep. 39:24-40:10). Walgreens hired Bank of America Merrill Lynch ("BAML") on September 8, 2016, to solicit bids for the stores. (See Doc. 231 ¶ 90). The same day, Walgreens opened an "electronic data room" containing detailed information about the stores to potential bidders. (See id. ¶ 91).

As the bidding process got underway, certain executives involved in the merger acknowledged [redacted]

[redacted] (See Doc. 239-86 at 2). Later that month, Ashish Kohli, Walgreens' Vice President of Investor Relations, emailed Pessina, Fairweather, Gradwell, and others reporting Walgreens' stock had been "relatively weak" due in part to "[n]ervousness" around the "deal closing" and particularly with regard to "finding buyers that the FTC will find acceptable." (See Doc. 239-141 at 2). [redacted] (See, e.g., Doc. 231 ¶ 86; Doc. 239-143 at 15; Doc. 239-6, Pessina Dep. 105:2-106:3). [redacted]

While divestiture talks continued, Walgreens executives began contemplating possible alternatives to the deal as then constituted. The parties vigorously dispute the seriousness and significance of these early discussions. (See id. ¶¶ 96-99, 209-210; Doc. 242-2 ¶¶ 96-99, 209-210). Nevertheless, Pessina's assistant noted a request from Pessina on July 13, 2016, to arrange a meeting "to discuss [Rite Aid] and debate scenarios should the deal not work out." (See Doc. 239-84 at 5). Pessina repeated this request to his assistant on July 22, 2016, who noted Pessina wanted the meeting to be in-person and include several specific Walgreens executives, most notably Timothy McLevish, Walgreens former Chief Financial Officer and then-advisor to Pessina. (See Doc. 239-85). He reiterated the purpose of the meeting was to "debate scenarios if our idea is not approved." (See id.) McLevish was the central figure in early discussions of [redacted] (See, e.g., Doc. 231

¶¶ 44, 96, 98; Doc. 242-2 ¶¶ 44, 96, 98). Between July and November 2016, he held [redacted] (See, e.g., Doc. 231 ¶ 98; Doc. 242-2 ¶ 98; Docs. 239-95, 239-101, 239-106; Doc. 239-104 at 13). [redacted] (See Doc. 239-104 at 13; Doc. 239-96; Pagni Dep. 95:3-4). Walgreens had approached Rite Aid prior to negotiating the merger with a proposal for just such an asset purchase, but Rite Aid flatly rejected the idea. (See Doc. 231 ¶ 95; see also Pessina Dep. 92:3-22; Pagni Dep. 95:17-96:14). McLevish left Walgreens at the end of November 2016, (see Doc. 231 ¶ 100), [redacted]

BAML reported the bidding results to Walgreens at the end of September 2016. Only four companies offered to buy the whole divestiture package—Sycamore Partners Management, L.P.; Fred's, Inc.; Specialty Retail Shops Holding Corp. ("Shopko"); and Albertsons Companies, Inc; CVS did not submit a bid. (See Doc. 231 ¶ 101; Doc. 242-2 ¶ 101; see also Doc. 239-162; Doc. 239-176). [redacted] (see Docs. 239-161 at 1-2; Doc. 239-319), [redacted] (see Doc. 239-162 at 2; Pessina Dep. 52:2-5, 52:21-53:1). The business media took a gloomy tone regarding the bids too. Between September 28 and October 19, 2016, Kohli shared articles with Pessina, Fairweather, and Gradwell from the *New York Post*, *CTFN*, and *Wolfe Research* which called the divestiture package a tough sell, (see Doc. 234-41), described the deal as being "stalled" due to "tepid" interest

among buyers for "a package that is at best second rate," (see Doc. 239-184), and relayed Kroger, a supermarket chain the *Post* called Walgreens' "best hope" to win FTC approval, was about to "back[] away" from the deal, (see Doc. 239-190 at 2-4, 6). An analyst's note on the second *Post* article announced "Deep Concerns Remain with the WAG/RAD merger." (See Doc. 239-190). Kohli commented "[r]eputable or not, the *Post* article creates further uncertainty in a market that is already quite nervous on this deal." (See id. at 2).

C. Extension

On October 20, 2016, recognizing they would not secure FTC approval before the October 27 deadline, Walgreens and Rite Aid triggered the extension provision of the merger agreement and extended the deadline for completing the merger to January 27, 2017. (See Doc. 231 ¶¶ 104-105). The same day, Pessina spoke on an earnings call with shareholders regarding the merger. (See id. ¶¶ 113-114). During the call, an analyst asked Pessina why he was confident the merger would close in early 2017 notwithstanding the delay. (See id. ¶ 113). Pessina acknowledged the approval process was taking longer than expected but reassured the analyst, "we are confident, as confident as we were before about this deal." (See id. ¶ 114). He also disputed recent media reports the FTC disfavored the merger:

> Nothing has changed. We have just delayed the execution of the deal. This is our perception. We have always been optimistic because we have never seen an attitude from the FTC, which was absolute negative. Of course they were inquiring. They were very detailed. They were asking a lot of questions. Sometimes they were taking time to respond, but at the end of the day, I believe we have had a good collaboration. We are having a good

> collaboration. We tried to respond to all of their needs. This takes time, but at the end we are still confident.
>
> Of course, I know that we read on the papers very different news. No idea about the sources of this news, but for sure if we could talk, and of course you know that we cannot, our news would be different. For what we see today, we see just a long administrative process, but we don't see substantial differences from what we were expecting.
>
> Yes, probably more stores, a little more stores here and there, but at the end of the day, as far as I can see today, as far as we can see today, we are absolutely confident that we can create—that we can do the deal and we can create the value, just this value would be a little postponed . . . .

(Id.)

Pessina's statements were widely reported by the business media, (see, e.g., Doc. 239-20; Doc. 239-29 (collecting articles); Doc. 239-36 (same)), and bolstered confidence among analysts and financial figures the merger would be consummated, (see, e.g., Doc. 239-21 at 2; Doc. 239-25 at 3, 6, 9-10, 13). For example, a Goldman Sachs investment banker emailed Pessina the same day expressing relief, noting "[t]here had been concerns among investors that the Rite Aid deal may not get to the finish line," but Pessina's comments had "gone a long way to reassure the market." (See Doc. 239-17). Rite Aid's stock price closed on October 19 at $6.66 per share; on October 20, the day of Pessina's statement, Rite Aid closed at $7.11, an increase of 6.8%. (See Doc. 238-1 ¶ 43). By October 27, however, Kohli reported to Pessina and Gradwell that Rite Aid's stock had since "given up all those gains" because "[t]he market remains quite nervous around this deal." (See Doc.

239-39). On November 15, Bernstein emailed Pagni, Vainisi, and others reporting the latest feedback from the FTC. (See Doc. 239-169). [redacted]

(See id. at 2-3). [redacted]

(See id. at 3).

On November 17, 2016, Fairweather and Gradwell spoke at the Jefferies Healthcare Conference. (See Doc. 231 ¶¶ 126-128). During the conference, an analyst asked Fairweather about the status of the regulatory approval process. (See id. ¶ 126). Fairweather responded by saying:

> We are very clear – from what we said in September, we expect the deal to complete. We have been absolutely consistent on that from day one when we announced it. As we said back in September and reinforced in our results, we do expect the store divestitures to now be in the range of 500 to 1000.
>
> We expect to be able to sign the divestiture agreements before the end of this calendar year and to be able to complete the transaction in the first quarter, so it is – sorry, early in the new year, in the calendar year.
>
> So other than really from where we are a year ago, it is a few more divestitures than we had originally anticipated but within what we had in the contract, and it has just taken us a little bit longer than – ideally we would have hoped to work through with the FTC when we work in a very collaborative manner.
>
> But, fundamentally, the economics of the deal are the same. . . . [N]othing really has changed other than it's just perhaps taken a little bit longer than we had thought in

> the first place. There's lots of stuff in the papers but it is amazing where it comes from.

(Id. ¶ 127). Gradwell then built on Fairweather's response, adding:

> [J]ust to be clear on where we are in the process and we have spoken about this – I mean we have enough clarity on what we have to do in terms of remedies with the FTC to be – to have opened the data room for sale of pharmacies to potential buyers.
>
> Everyone I know – there was large speculation in the marketplace that we would never find buyers. We are not entirely that green when it comes to doing transactions. We went into this in the knowledge that the Walgreens management team had looked at Rite Aid in many different ways and had not been able to justify the deal for a variety of reasons.
>
> And so we went into it having assessed initially that we would be able to find buyers and that those interested in the marketplace to buy stores we may have to divest. That remains the case. We have been in ongoing discussion with the FTC.
>
> The FTC have given permission for a number of potential buyers to access the data room. That is at their grant because, to be very clear, there is a level of detail on the Rite Aid stores that while we have done some extensive research ourselves, Rite Aid can't share that level of data with us for commercial reasons in case the deal doesn't go through.
>
> So the FTC have had to give – grant permission for the potential buyers to look at the data room. And what we said at the results was that we saw no reason, or no technical reason, why we shouldn't be able to complete our discussions with potential buyers before the end of this calendar year and that remains the same.
>
> . . .
>
> So from our point of view, the process has never stopped, which is quite key, because if there was a blocking

> rationale the case team would stop working at the FTC. You can never guarantee anything. It still has to go through the commissioners of the FTC but we are slightly further behind where we thought we would be just because the level of detail, but things are progressing well.

(Id. ¶ 128). Financial journalists and analysts referenced the executives' comments in reports published over the ensuing weeks, with some citing their statements as supporting confidence the deal was on track for divestiture agreements to be etched by the end of the calendar year and the merger completed during the first quarter of 2017. (See e.g., Doc. 239-44 at 10; Doc. 239-48 at 2; Doc. 239-49 at 26). At least one report interpreted Gradwell's statements as indicating the FTC had approved the list of proposed buyers that were accessing the data room. (See Doc. 239-44 at 10). Rite Aid's stock price declined by 2.7% on November 17, 2016, to $7.61 per share. (See Doc. 234-98 ¶ 14 n.20).

D. Fred's Divestiture Agreement

Walgreens eventually settled on Fred's, a discount store chain with locations across the southeastern United States, as the bidder to pitch to the FTC. (See Doc. 239-178; see also Doc. 231 ¶¶ 101, 121, 134, 136). The record suggests Fred's was not universally seen as an ideal choice within Walgreens' camp. (See, e.g., Doc. 239-163 (email from Vainisi on September 28, 2016, asking if recipients saw "any way Fred's could be made more real / doable?" and commenting on its "lack of sophistication"); Doc. 239-164 at 7-8 (BAML noting "[o]ther than the price and willingness to take all the stores, not much to like in [Fred's] proposal")). According to an October 11, 2016 email from Vainisi, [redacted]

[redacted] (See Doc. 239-178). On November 10, a member of the merger deal team circulated an email [redacted] (See Doc. 239-167 at 2-3).

The FTC also expressed [redacted] (See, e.g., Greenberg Dep. 30:8-17; Doc. 239-213). The FTC's concerns with the Fred's divestiture plan focused primarily on two issues. First, the FTC favored a "clean sweep"—where Walgreens sold off all the Rite Aid stores in a given region—to the more complex divestiture structure proposed by Walgreens. (See Doc. 231 ¶¶ 78-79, 84-85; see also Doc. 239-213 at slide 4). Second, the FTC had [redacted] (See Doc. 231 ¶ 130; see also Doc. 234-52; Doc. 239-112 at 2-3). Weil reported to Walgreens on December 6, 2016 [redacted] (See Doc. 239-171). The same day, Standley informed Rite Aid's board of directors that its attorneys had advised [redacted] (See Doc. 239-212 at 4; see also Pagni Dep. 127:10-25 ("If Rite Aid had heard it, we probably heard it as well.")). Two days later, Bernstein met with Pessina and thereafter relayed to a Weil attorney [redacted] (See Doc. 239-215). The following week, Weil [redacted]

[redacted] (See Doc. 239-212).

Extant concerns notwithstanding, Walgreens and Rite Aid issued a press release on December 20, 2016, announcing Fred's had agreed to purchase 865 Rite Aid stores and related assets for $950 million on the condition the FTC approve the Walgreens-Rite Aid merger. (See Doc. 231 ¶ 136). The divestiture agreement also required Fred's to purchase any additional stores the FTC might require Walgreens to divest. (See id. ¶ 137). The day before the Fred's announcement, Rite Aid's stock closed at $8.17 per share; it ended the day of the announcement at $8.61 per share, an increase of $0.44 or 5.4%. (See Doc. 238-1 ¶ 44).

The FTC began subjecting Fred's to a formal vetting process. (See Doc. 231 ¶¶ 142-144; Doc. 242-2 ¶¶ 142-144; see also Doc. 234-55 at slide 3 (describing some vetting procedures)). On a January 1, 2017 call, Weil updated Walgreens [redacted] (See Doc. 231 ¶ 152; Doc. 239-115). [redacted] (See Doc. 239-115 at 2; see also Doc. 231 ¶ 152). On January 3, Vainisi reached out to several Walgreens executives to [redacted] he noted he "expect[ed] this all to come up in a meeting with

[Pessina] on Thursday [January 5] afternoon (if not before)." (See Docs. 239-116, 239-118; Doc. 239-225 at 2).

Walgreens held an earnings call on January 5, 2017. (See Doc. 231 ¶¶ 156-158). Pessina stated in his opening remarks on the call:

> [Y]ou have seen the progress we announced at the end of December regarding the proposed transaction with Rite Aid and having reached a conditional agreement with Fred's. We still have to complete our work with the FTC. And as we have seen, these things can take some time, as the FTC are scrupulous in ensuring that they can see everything properly and fully. That said, I remain as convinced as ever of the strategic benefit of the proposed Rite Aid transaction and look forward to being able to provide you with another update as soon as we can. We are clearly making progress, and while I would always like to move faster and do more, we must be measured and ensure we work at a pace with which we are confident we can deliver for our customers and our shareholders on all the plans and strategies we have discussed with you.

(See id. ¶ 157). During the call, an analyst asked Pessina, "When we think about Rite Aid, what's the Plan B if it doesn't get approved as we get down to the end here in the U.S. business?" (See id. ¶ 158). Pessina replied:

> We are working hard to have this deal approved. And for the time being, we don't want even to think of the fact that the deal could not be approved after so many months when we have given a lot of information and we have had a very good relationship with the people of the FTC. And they have continued to ask information and we have continued to give information. And in reality, we believe that if they have spent so much time asking and analyzing so many documents is because they want to understand the substance of this transaction, which is fine.
>
> So we are not thinking of a Plan B today. We don't have to distract people today. I can assure you that if let's say we had a big surprise that this wouldn't happen after, we

> would have to sit down and decide what to do because there are many, many possible reactions to this, as you can imagine. We would have to see what our counterparty, Rite Aid, wants to do and see whether there are solutions or not, what are other alternatives.

(See Doc. 231 ¶ 159). Business journalists and analysts widely reported Pessina as having complete confidence in the merger and as disavowing contingency plans. (See, e.g., Doc. 239-53 at 4; Doc. 239-54; see also Doc. 326-332). Rite Aid's stock price declined by 1.0% to $8.19 on the day of the call. (See Doc. 234-98 ¶ 14 n.20). Vainisi and Pessina met after the call, but it is unclear whether they actually discussed terminating the deal. (See Doc. 239-118; Doc. 239-117; Vainisi Dep. 138:13-20).

E. Revised Merger Agreement

The FTC did not look upon the Fred's divestiture as favorably as Walgreens' executives hoped. On January 10, 2017, Newborn emailed Moiseyev asking if there was "anything I can tell my client [Walgreens]? [A]ny path forward in reality?" (See Doc. 239-234; Doc. 231 ¶ 161). Moiseyev responded that "[a]t this point, it's really tough," there was no "good solution," the deal carried "a lot of risk," and the FTC "doesn't have a great deal of tolerance for consents that it sees as risky." (See Doc. 239-234). Moiseyev reiterated he has "been concerned all along that there is not any acceptable buyer that realistically brings anything to the table," and that "[t]he current guys" (presumably referencing Fred's) "seem to fall short of" FTC expectations. (See id.) Moiseyev concluded "I'm not sure that there's a clear path forward" or "that any buyer can solve the problems here." (See id.) The next day, Bernstein emailed Pagni to relay feedback from Mohr, [redacted]

[redacted]

[redacted] (See Doc. 239-91). According to Bernstein, [redacted] (Id.) Bernstein emailed Pagni and Newborn the next day reporting [redacted] (See Doc. 239-119).

On January 17, a group of Walgreens executives updated Pessina on the status of the FTC approval process. (See Doc. 239-120; see also Doc. 239-121; Pessina Dep. 168:1-25). They informed Pessina [redacted] (See Doc. 239-120 at slide 3). They asserted [redacted] (See id.) The team [redacted] (See id. at slide 6). They also suggested [redacted]

[redacted] (See id. at slide 8). The day after the presentation, BAML held a call with Walgreens executives, including Pessina; the group discussed Walgreens' "thinking about what are the alternatives if RAD does not happen," that the FTC "does not see how Fred's could possibly handle the stores," and whether Walgreens could "buy certain assets from [Rite Aid]" instead. (See Doc. 239-241 at 2). In an email chain scheduling a follow-up meeting, one BAML employee describes the agenda for the meeting as "'Plan C' ideas" and asks Vainisi to "let us know what else if anything we can be doing on Plan A and B." (See Doc. 293-123).

Pessina chose the third option—extending the agreement under renegotiated terms—and opened negotiations with Rite Aid. (See Doc. 231 ¶¶ 168-72; Doc. 242-2 ¶¶ 168-171). At some point in January while Walgreens and Rite Aid were negotiating the revised merger agreement, Pessina called Fairweather, who relayed [redacted] (See Doc. 239-328, Fairweather Dep. 136:8-137:7, 235:12-16, 236:10-17). Fairweather also emphasized [redacted] (See id. at 137:13-18, 236:2-5). Nonetheless, [redacted] (See id. at 137:18-20, 236:11-17).

Walgreens and Rite Aid inked a revised merger agreement on January 29, 2017. (See Doc. 231 ¶ 172). Key changes included reducing the price-per-share

from $9.00 to a range of $6.50 to $7.00, resetting the deadline for completion to July 31, 2017, and expanding the number of Rite Aid stores Walgreens could divest from 1,000 to 1,200. (See id.) The breakup fee remained set at $325 million. (See id. ¶ 173). The companies' respective boards approved the revised deal the same day and announced it to the public on January 30, 2017. (See id. ¶¶ 178-80). Rite Aid's stock was valued at $6.93 per share on Friday, January 27, 2017. (See Doc. 238-1 ¶ 46). On Monday, January 30, 2017, the price fell to $5.72 per share at close, a decrease of $1.21 per share or 17.5%. (See id.)

F. New Rite Aid & Project DeLorean

Walgreens, Rite Aid, and Fred's pinned their hope the FTC would finally approve the merger on a divestiture plan dubbed "New Rite Aid." (See Doc. 231 ¶¶ 183, 186-87; Doc. 242-2 ¶¶ 183, 186-87; see also Pagni Dep. 138:14-19, 176:22-177:20, 193:6-17). The crux of the plan was to combine Fred's existing retail footprint with a larger subsection of Rite Aid's and transfer key management figures from Rite Aid to Fred's to create an entity large enough, competent enough, and financially strong enough to genuinely compete with Walgreens. (See Pessina Dep. 192:2-194:1; Vainisi Dep. 167:12-18, 182:13-18; Pagni Dep. 126:3-10, 138:14-19).

The concept was [redacted] (See Doc. 234-67 at 2). He closed [redacted] (See id.) The business media had reservations [redacted] On March 15,

2017, a Walgreens employee forwarded a *Bloomberg* article to Pessina, Pagni, and Vainisi reporting FTC staff "still have 'significant reservations' about Fred's suitability as a buyer of divested stores." (See Doc. 239-257). The team viewed the article [redacted] (See id.) Two days later, another *Bloomberg* article circulated among Walgreens leadership, including Pessina, Pagni, and Vainisi, this one reporting the "former head at FTC's Bureau of Competition" had disclosed that "talks on Walgreens are 'at a standstill.'" (See Doc. 239-258). Pessina suggested the article was an "opportunity to show the new administration how these people are behaving," and Pagni concurred, stating "This is absolutely appalling and unprofessional behaviour." (See id.)

Meanwhile, Walgreens continued to receive [redacted] (See Doc. 239-259 at 3). Bernstein asserted [redacted] (See id.) Weil advised Walgreens to [redacted] (See Doc. 239-260 at 3). Vainisi emailed [redacted] (See Doc. 239-261 at 3). He asserted [redacted]

[redacted] (See id.)

Walgreen [redacted] on April 3, 2017, submitted a revised divestiture plan selling off 1,200 stores and providing for essentially a "clean sweep" in the geographic areas which were the focus of FTC concerns. (See Doc. 231 ¶ 194). In an email exchange between Vainisi and Pagni the same day, [redacted] (See Doc. 239-126). Vainisi suggested [redacted] (See id.) The next day, Bernstein emailed Newborn stating [redacted] (See Doc. 239-125). Specifically, Pagn [redacted] (Id.) Pagni emphasized [redacted] (Id.)

When asked during his deposition what changed between September 2016 (when McLevish proposed an asset purchase to Pessina) and April 2017, Pessina answered, "the desperation of Rite Aid." (See Pessina Dep. 128:22-129:23). By April 5, 2017, Walgreens executives [redacted] (See Doc. 239-128) [redacted]

[redacted] (See Vainisi Dep. 180:12-181:9).

Two days after [redacted] on April 5, 2017, Walgreens held another earnings call. (See Doc. 231 ¶ 195). During the call, Pessina stated:

> Turning to Rite Aid, I am still optimistic that we will bring this deal to a successful conclusion, but there is no doubt that the process of getting clearance for the transaction is taking longer than we expected. We are constantly and currently collaborating with FTC, Rite Aid and Fred's to get the necessary approvals and close the transaction. At the same time, we are working to be in a position to certify compliance. We believe that we can achieve this in the coming weeks and are still working toward our revised timetable to obtain clearance by the end of July. The changes to the deal that we agreed in January demonstrate our absolute commitment to ensure all transactions meet our demanding financial and strategic requirements, while allowing us the ability to address any reasonable demand that may be made of us in obtaining regulatory approval.

(Id. ¶ 198). When asked by an analyst "where exactly" Walgreens and the FTC were not "seeing eye to eye," Pessina replied, "Well, as I said, I am still positive on this deal. I believe that we have a strong argument to defend this deal. . . . We are collaborating very well with the FTC." (See id. ¶¶ 199-200). A second analyst asked Pessina if the FTC rejecting Fred's as a buyer doomed the merger. (See Doc. 237 ¶ 46). Pessina responded by doubling down on Fred's: "For the time being, we believe that Fred's is the right buyer. We believe that they have—particularly in the configuration we are proposing now, they are absolutely a legitimate player in this industry." (See id.) Pessina's statements were, once again, reported widely in the

business media, with many articles and reports asserting the protracted Walgreens-Rite Aid merger was still likely to close based on his comments. (See, e.g., 239-311 (collecting media coverage); Doc. 239-64 (same); Doc. 239-312 at 2 (collecting analyst coverage)). Rite Aid's stock rose 1.2% to $4.26 per share after Pessina's comments. (See Doc. 234-98 ¶ 14 n.20).

E. Cancellation of the Merger

In mid-May, Walgreens and Rite Aid began [redacted] (See Doc. 231 ¶¶ 210-211; Doc. 242-2 ¶¶ 210-211; see also Pagni Dep. 177:21-180:7). On May 26, Newborn emailed Walgreens executives [redacted] (See Doc. 231 ¶ 213; Doc. 239-233, Greenberg Dep. 153:13-20). [redacted] (See Doc. 231 ¶¶ 210-211; Doc. 242-2 ¶¶ 210-211; see also Doc. 234-80 (outlining details of proposed transaction)).

Acting Director of the Bureau of Competition Tad Lipsky informed Weil on June 21, 2017, [redacted] (See Doc. 231 ¶ 214). Lipsky also informed Walgreens' attorneys [redacted] (See id.) Finally recognizing the writing on the wall, Walgreens officially threw in the towel on June 28, 2017. (See id.) Its board of directors voted unanimously to terminate the merger and adopt the

asset purchase agreement. (See id. ¶ 216). The next day, Walgreens issued a press release announcing the existing agreements with Rite Aid and Fred's were terminated, and Walgreens had entered into a new agreement with Rite Aid to purchase 2,186 stores. (See id. ¶¶ 218-219). Walgreens paid Rite Aid the $325 million breakup fee. (See id. ¶ 220).

F. Procedural History

Named plaintiffs are three individuals who bought or sold shares in Rite Aid between Pessina's statement on October 20, 2016, and cancellation of the merger on June 28, 2017. The instant lawsuit has its origins in Hering v. Rite Aid Corporation, No. 1:15-CV-2440 (M.D. Pa.), a putative securities class action brought by a Rite Aid shareholder after cancellation of the merger. The complaint alleged Walgreens, Rite Aid, and several of their executives violated Section 10(b) of the Securities Exchange Act by making false statements regarding the merger between October 27, 2015, and June 28, 2017. See Hering v. Rite Aid Corp., 331 F. Supp. 3d 412 (M.D. Pa. 2018). Former Judge John E. Jones III dismissed all claims against Rite Aid but found certain statements by Walgreens' executives to plausibly be actionable. See id. at 422-28. Hering, however, made his last purchase of Rite Aid stock before the earliest of the actionable statements; plaintiffs in the instant lawsuit attempted to intervene, but Judge Jones denied their motion and dismissed the case for lack of standing. See Hering, No. 1:15-CV-2440, Doc. 149 (M.D. Pa. Oct. 24, 2018).

Plaintiffs filed the present class action lawsuit based in the main on statements Judge Jones found actionable in Hering. This case was originally

EXHIBIT 3

ISS SCAS
SECURITIES CLASS ACTION SERVICES

THE TOP 100

U.S. CLASS ACTION SETTLEMENTS OF ALL-TIME

AS OF DECEMBER 31, 2022

EXECUTIVE SUMMARY

While all major indices delivered investors negative returns in 2022, the class action landscape within the United States remained incredibly robust throughout the year. In fact, this past year recorded the largest dollar value of settlements since 2018 and the highest quantity of settlements since 2017.

Looking back at the full year of 2022, ISS Securities Class Action Services ("ISS SCAS") verified 141 approved monetary class action settlements in the United States. These cases amounted to $4.77 billion of settlement funds available for distribution to eligible class members.

Despite the continued decline in newly filed securities-related cases for the third year in a row, the number of settlements and their total dollar value increased significantly from the prior year. The quantity of class action settlements in 2022 increased by 21.5 percent from 116 in 2021, and the settlement funds approved increased by 35.7 percent from $3.51 billion in 2021. In addition, the timing of settlements in 2022 grew in quantity over each quarter, from a low of 31 settlements in Q1 to a high of 41 settlements in Q4 (Q2 and Q3 had 34 and 35 settlements, respectively).

Of the 141 U.S. settlements in 2022, 110 cases received judgment in federal courts amounting to $4.09 billion, while 31 cases received judgment in state courts amounting to $675.25 million.

In reviewing the average length of litigation, the 141 settlements averaged 3.6 years from the initial filed complaint to final approval of the settlement by the presiding judge. However, on a case-by-case basis, the time it took to reach resolution often varied widely. For example, the shortest case – a $12.5 million settlement with Akcea Therapeutics – took just over 14 months, while the longest case – a $165 million settlement with NovaStar Mortgage Funding Trust – exceeded 14 years.

VENUE	NUMBER OF SETTLEMENTS	DOLLAR VALUE OF SETTLEMENTS	AVERAGE SETTLEMENT VALUE	AVERAGE LIFECYCLE
Federal	110	$4,093,765,874	$37,216,053	3.8 Years
State	31	$675,250,000	$21,782,258	3.1 Years

An analysis of the 110 federal court settlements reveals that 100 alleged violations of Section 10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934. Fourteen of these 100 cases though concurrently alleged violations of Section 11 of the Securities Act of 1933 in addition to the 10(b) claims. Furthermore, six settlements asserted claims solely under Section 11, while 20 received a judgment related to claims resulting from a corporate transaction. Of the 31 state settlements, 23 were related to corporate transactions (including alleging, among other things, breaches of fiduciary duties by directors and officers) and eight alleged Section 11 claims.

Additionally, ISS SCAS identified the following insights into the 141 settlements during 2022:

- 22 alleged stock sales by company insiders
- 18 settlements with alleged violations of Generally Accepted Accounting Principles ("GAAP")
- Seven companies allegedly restated their financials
- Three companies had previously filed for bankruptcy
- 20 companies are (or were) listed in the S&P 500 index, including two noteworthy ESG-related actions against CBS and Endo International

In terms of court locations, the most active federal court was the U.S. District Court for the Southern District of New York with 26 settlements, but yet only three of the ten largest settlements from 2022 occurred within the S.D.N.Y. The next most active locations were tied with ten settlements each: the Northern District of California and the Central District of California, while the District of New Jersey recorded nine settlements. In state court, the most active locations were the Delaware Court of Chancery, which presided over 17 settlements, followed by the New York Supreme Court (New York County) with six settlements.

For the second year in a row, two of the settlements in the calendar year delivered significant settlement amounts to be included within this Top 100 publication of the largest U.S. settlements of all-time. These two class action resolutions include:

- Twitter, Inc. – $809.5 Million
- Teva Pharmaceutical Industries Ltd. – $420 Million

The Twitter case – led by Robbins Geller Rudman & Dowd and Motley Rice as co-lead counsel – became the 19th U.S. largest settlement of all-time and second largest in the Northern District of California. The Teva case – litigated in the District of Connecticut and led by lead counsel Bleichmar Fonti & Auld – became the largest U.S. settlement of all-time involving an Israeli company. These top two settlements combined to surpass $1.22 billion in shareholder recoveries or 25 percent of the total value from all U.S. class action settlements in 2022.

Additional items of interest during 2022 included:

- The legal resolution of the first COVID-related class action, as SCWorx settled its litigation for $3.3 million. To date, ISS SCAS has tracked over 70 investor complaints alleging various acts of fraud related to the COVID-19 pandemic, a large number of which have already been dismissed. However, two additional actions are on track to settle in January 2023: Vaxart agreed to pay investors $12 million, while Inovio Pharmaceuticals agreed to a $44 million settlement. One additional COVID-related class action of note is currently at the "tentative settlement" stage, as investors of Chembio Diagnostics await an official claim deadline date in connection with an $8.1 million settlement.

- A number of SEC Fair Fund settlements required investor claims to be filed during the calendar year. These settlements included $200 million in monetary penalties paid by General Electric (allegations stated the Boston-based multinational conglomerate failed to disclose profit growth in its power business and worsening trends in its insurance business); and $100 million paid by Facebook (n/k/a Meta Platforms, Inc.) (allegations stated the Silicon Valley-based tech giant made misleading disclosures regarding the misuse of user data, including knowledge of a third-party developer actually handling the company's user data).

For eligible investors who filed claims in 2022, the court-appointed claims administrators were dominated by five firms. The below table illustrates these five CA's managed 88 percent of the quantity of settlements and 94 percent of the value of settlements.

CLAIMS ADMINISTRATOR	NUMBER OF SETTLEMENTS	VALUE OF SETTLEMENTS
A.B. Data	33	$800,300,000
Strategic Claims	31	$197,897,500
JND Legal Administration	22	$823,950,000
Gilardi & Co.	20	$646,123,374
Epiq Global	19	$2,040,157,500

Looking ahead, it appears likely that 2023 will continue to deliver meaningful shareholder recoveries. A few 2023 high profile settlements have already been announced and await formal court approval in the coming months. These include… Dell Technologies ($1 billion), McKesson Corporation ($141 million), and Grupo Televisa ($95 million). At this time, only Dell is large enough in value to enter next year's Top 100 report. Interestingly, once legally approved, Dell will become the 17th U.S. investor-related class action to have reached the $1 billion threshold and the largest ever litigated in a state court.

Additionally, in 2023, investors will likely have an opportunity to participate in the claims filing process via a number of SEC Fair Funds, as recent announcements included a $201 million settlement with The Boeing Company, a $125 million settlement with Nikola Corporation, and a $25 million settlement with UBS Financial Services.

With all of this continued activity within the securities litigation landscape, members of the financial, legal, and professional services industries can count on ISS Securities Class Action Services to continue to monitor and keep the community up-to-date with regard to class action trends & developments.

# # # # #

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METHODOLOGY

The ISS Securities Class Action Services' Top 100 Settlements of All-Time is an annual report that identifies the largest securities U.S. class action settlements filed after the passage of the Private Securities Litigation Reform Act of 1995, ranked by the total value of the settlement fund. The statistics and totals from this report do not include U.S. Antitrust settlements nor any securities related settlements outside the United States. Cases with the same settlement amount are given the same ranking. For cases with multiple partial settlements, the amount indicated in the total settlement amount is computed by combining all partial settlements. The settlement year reflects the year the most recent settlement received final approval from the court. Only court approved final settlements are included.

SETTLEMENT CATEGORIZATION

The Top 100 Settlements of All-Time provides a wealth of information, including the settlement date, filing court, settlement fund, and identifies the key players for each settlement. The report is broken down into following categories:

INSTITUTIONAL LEAD PLAINTIFF PARTICIPATION

This section displays the number of cases in the Top 100 involving institutional lead plaintiffs. It also identifies the institutional investors serving as institutional lead plaintiff.

LEAD COUNSEL PARTICIPATION

This section lists the law firms that served as lead or co-lead counsel for each litigation in the Top 100 Settlements and identifies the most frequent lead or co-lead counsel in the Top 100 Settlements. Counsels with the same participation are given the same ranking. In addition, the list includes participation in cases where they were litigated under a previous name.

CLAIMS ADMINISTRATION PARTICIPATION

This section lists the claims administrators who handled the Top 100 Settlements and identifies the most frequent claims administrators. It includes settlements administered from old entities.

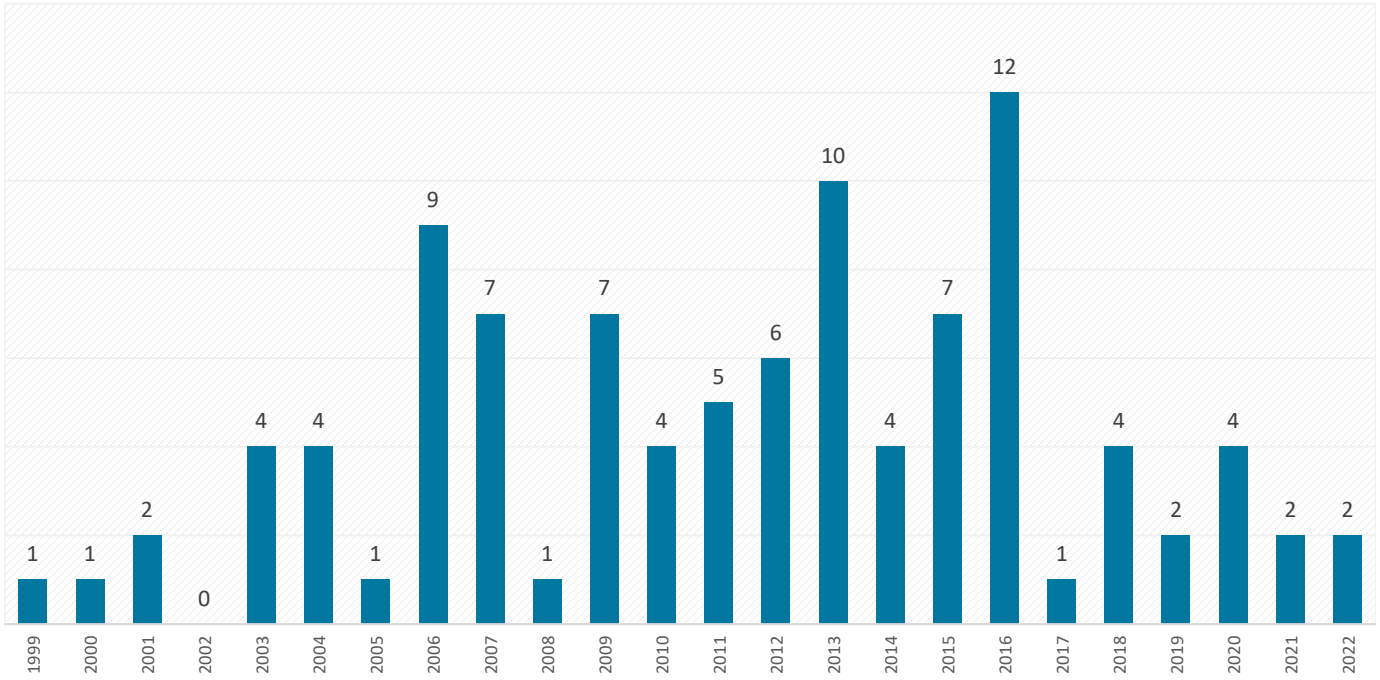
COURT VENUE

This section lists the settlements by location, specifically federal court vs state court, as well as the district or division (in federal cases) where the litigation and settlement took place.

TOP 50 SEC DISGORGEMENTS

This section provides a list of the largest SEC Fair Fund settlements, ranked according to the Total Settlement Amount. The Total Settlement Amount reflects the sum of disgorgement and civil penalties in settlements reached with the Securities and Exchange Commission. The Top 50 SEC Disgorgements includes only those where the distribution plan has received final approval from the SEC. Cases with the same settlement amount are given the same ranking.

NUMBER OF SETTLEMENTS BY YEAR IN THE TOP 100



THE TOP 100 SETTLEMENTS

RANK	COMPANY NAME	COURT	SETTLEMENT YEAR	TOTAL SETTLEMENT AMOUNT
1	Enron Corp.	S.D. Tex.	2010	$7,242,000,000
2	WorldCom, Inc.	S.D. N.Y.	2012	$6,194,100,714
3	Cendant Corp.	D. N.J.	2000	$3,319,350,000
4	Tyco International, Ltd.	D. N.H.	2007	$3,200,000,000
5	Petroleo Brasileiro S.A. - Petrobras	S.D. N.Y.	2018	$3,000,000,000
6	AOL Time Warner, Inc.	S.D. N.Y.	2006	$2,500,000,000
7	Bank of America Corporation	S.D. N.Y.	2013	$2,425,000,000
8	Household International, Inc.	N.D. Ill.	2016	$1,575,000,000
9	Valeant Pharmaceuticals International, Inc.	D. N.J.	2021	$1,210,000,000
10	Nortel Networks Corp. (I)	S.D. N.Y.	2006	$1,142,775,308
11	Royal Ahold, N.V.	D. Md.	2006	$1,100,000,000
12	Nortel Networks Corp. (II)	S.D. N.Y.	2006	$1,074,265,298
13	Merck & Co., Inc.	D. N.J.	2016	$1,062,000,000
14	McKesson HBOC Inc.	N.D. Cal.	2013	$1,052,000,000
15	American Realty Capital Properties, Inc.	S.D. N.Y.	2020	$1,025,000,000
16	American International Group, Inc.	S.D. N.Y.	2013	$1,009,500,000
17	American International Group, Inc.	S.D. N.Y.	2015	$970,500,000
18	UnitedHealth Group, Inc.	D. Minn.	2009	$925,500,000
19	Twitter, Inc.	N.D. Cal.	2022	$809,500,000
20	HealthSouth Corp.	N.D. Ala.	2010	$804,500,000
21	Xerox Corp.	D. Conn.	2009	$750,000,000
22	Lehman Brothers Holdings, Inc.	S.D. N.Y.	2014	$735,218,000
23	Citigroup Bonds	S.D. N.Y.	2013	$730,000,000
24	Lucent Technologies, Inc.	D. N.J.	2003	$667,000,000

25	Wachovia Preferred Securities and Bond/Notes	S.D. N.Y.	2011	$627,000,000
26	Countrywide Financial Corp.	C.D. Cal.	2011	$624,000,000
27	Cardinal Health, Inc.	S.D. Ohio	2007	$600,000,000
28	Citigroup, Inc.	S.D. N.Y.	2013	$590,000,000
29	IPO Securities Litigation (Master Case)	S.D. N.Y.	2012	$585,999,996
30	Bear Stearns Mortgage Pass-Through Certificates	S.D. N.Y.	2015	$500,000,000
30	Countrywide Financial Corp.	C.D. Cal.	2013	$500,000,000
32	BankAmerica Corp.	E.D. Mo.	2004	$490,000,000
33	Pfizer, Inc.	S.D. N.Y.	2016	$486,000,000
34	Wells Fargo & Company	N.D. Cal.	2018	$480,000,000
35	Adelphia Communications Corp.	S.D. N.Y.	2013	$478,725,000
36	Merrill Lynch & Co., Inc.	S.D. N.Y.	2009	$475,000,000
37	Dynegy Inc.	S.D. Tex.	2005	$474,050,000
38	Schering-Plough Corp.	D. N.J.	2013	$473,000,000
39	Raytheon Company	D. Mass.	2004	$460,000,000
40	Waste Management Inc.	S.D. Tex.	2003	$457,000,000
41	Global Crossing, Ltd.	S.D. N.Y.	2007	$447,800,000
42	Qwest Communications International, Inc.	D. Colo.	2009	$445,000,000
43	Teva Pharmaceutical Industries Limited	D. Conn.	2022	$420,000,000
44	Federal Home Loan Mortgage Corp. (Freddie Mac)	S.D. N.Y.	2006	$410,000,000
45	Marsh & McLennan Companies, Inc.	S.D. N.Y.	2009	$400,000,000
45	Pfizer, Inc.	S.D. N.Y.	2015	$400,000,000
47	Cobalt International Energy, Inc.	S.D. Tex.	2019	$389,600,000
48	J.P. Morgan Acceptance Corp. I	S.D. N.Y.	2015	$388,000,000
49	Cendant Corp. (PRIDES) II	D. N.J.	2006	$374,000,000

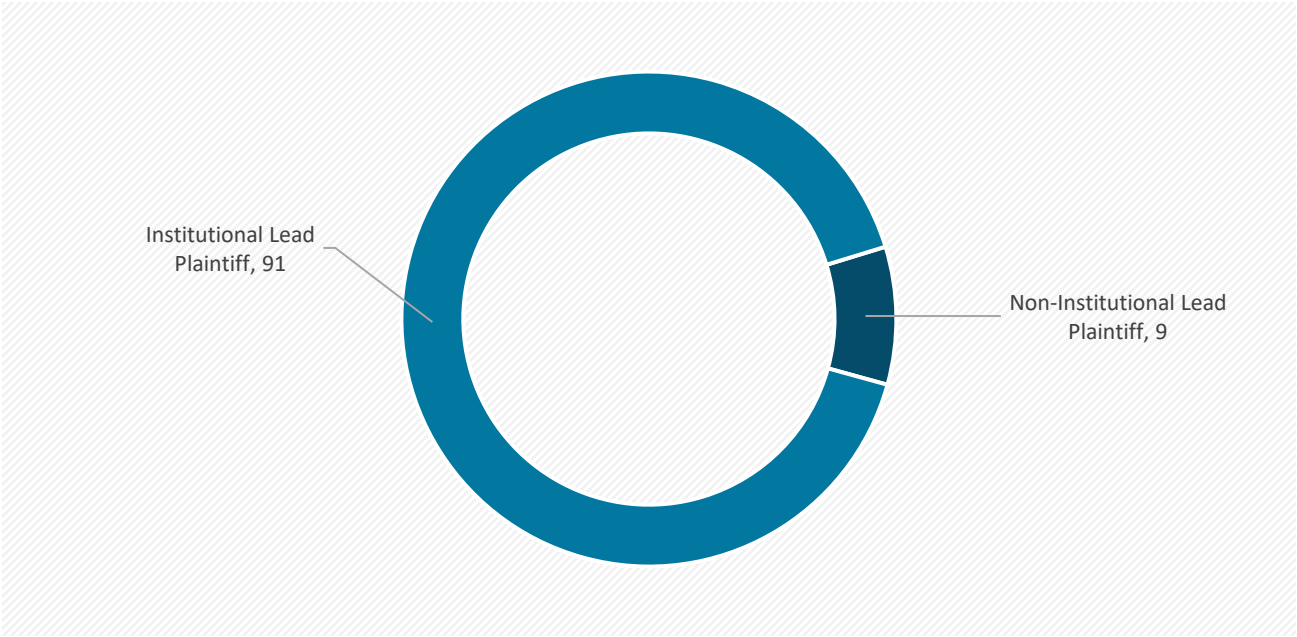
50	Refco, Inc.	S.D. N.Y.	2011	$358,300,000
51	First Solar, Inc.	D. Ariz.	2020	$350,000,000
52	IndyMac Mortgage Pass-Through Certificates	S.D. N.Y.	2015	$346,000,000
53	RALI Mortgage (Asset-Backed Pass-Through Certificates)	S.D. N.Y.	2015	$335,000,000
53	Bank of America Corporation	S.D. N.Y.	2016	$335,000,000
55	Rite Aid Corp.	E.D. Pa.	2003	$319,580,000
56	Merrill Lynch Mortgage Investors, Inc.	S.D. N.Y.	2012	$315,000,000
57	Williams Companies, Inc.	N.D. Ok.	2007	$311,000,000
58	Caremark, Rx, Inc. f/k/a MedPartners, Inc.	Alabama Circuit Court	2016	$310,000,000
59	General Motors Corp.	E.D. Mich.	2009	$303,000,000
60	Oxford Health Plans Inc.	S.D. N.Y.	2003	$300,000,000
60	DaimlerChrysler AG	D. Del.	2004	$300,000,000
60	Bristol-Myers Squibb Co.	S.D. N.Y.	2004	$300,000,000
60	General Motors Company	E.D. Mich.	2016	$300,000,000
64	Bear Stearns Companies, Inc.	S.D. N.Y.	2012	$294,900,000
65	El Paso Corporation	S.D. Tex.	2007	$285,000,000
66	Tenet Healthcare Corp.	C.D. Cal.	2008	$281,500,000
67	J.P. Morgan Acceptance Corp. I	E.D. N.Y.	2014	$280,000,000
67	BNY Mellon, N.A.	E.D. OK.	2012	$280,000,000
69	HarborView Mortgage Loan Trust	S.D. N.Y.	2014	$275,000,000
69	Activision Blizzard, Inc.	Del Court of Chancery	2015	$275,000,000
71	GS Mortgage Securities Corp.	S.D. N.Y.	2016	$272,000,000
72	Massey Energy Company	S.D. Va.	2014	$265,000,000
73	3Com Corp.	N.D. Cal.	2001	$259,000,000
74	Allergan, Inc.	C.D. Cal.	2018	$250,000,000

74	Alibaba Group Holding Limited	S.D. N.Y.	2019	$250,000,000
76	Signet Jewelers Limited	S.D. N.Y.	2020	$240,000,000
77	Bernard L. Madoff Investment Securities (II)	S.D. N.Y.	2016	$235,250,000
78	Charles Schwab & Co., Inc.	N.D. Cal.	2011	$235,000,000
79	MF Global Holdings Ltd.	S.D. N.Y.	2016	$234,257,828
80	Comverse Technology, Inc.	E.D. N.Y.	2010	$225,000,000
81	Waste Management Inc.	N.D. Ill.	1999	$220,000,000
82	Bernard L. Madoff Investment Securities (I)	S.D. N.Y.	2013	$219,857,694
83	Genworth Financial, Inc.	E.D. Va.	2016	$219,000,000
84	Washington Mutual, Inc.	W.D. Wash.	2016	$216,750,000
85	Sears, Roebuck & Co.	N.D. Ill.	2006	$215,000,000
85	Merck & Co., Inc.	D. N.J.	2013	$215,000,000
85	HCA Holdings, Inc.	M.D. Tenn.	2016	$215,000,000
88	Salix Pharmaceuticals, Ltd.	S.D. N.Y.	2017	$210,000,000
88	Wilmington Trust Corporation	D. Del.	2018	$210,000,000
90	The Mills Corp.	E.D. Va.	2009	$202,750,000
91	CMS Energy Corp.	E.D. Mich.	2007	$200,000,000
91	Kinder Morgan, Inc.	Kansas District Court	2010	$200,000,000
91	Motorola, Inc.	N.D. Ill.	2012	$200,000,000
91	WellCare Health Plans, Inc.	M.D. Fla.	2011	$200,000,000
95	Safety-Kleen Corp.	D. S.C.	2006	$197,622,944
96	MicroStrategy Inc.	E.D. Va.	2001	$192,500,000
96	SCANA Corporation	D. S.C.	2020	$192,500,000
98	Motorola, Inc.	N.D. Ill.	2007	$190,000,000
99	Snap, Inc.[1]	C.D. Cal.	2021	$187,500,000

[1] The total value from the Snap, Inc. settlement also includes the investor action from California Superior Court. However, in the Lead Counsel calculations noted within this report, the federal vs state settlement amounts are itemized.

100	Bristol-Myers Squibb Co.	D. N.J.	2006	$185,000,000

SETTLEMENTS REPRESENTED BY INSTITUTIONAL LEAD PLAINTIFF

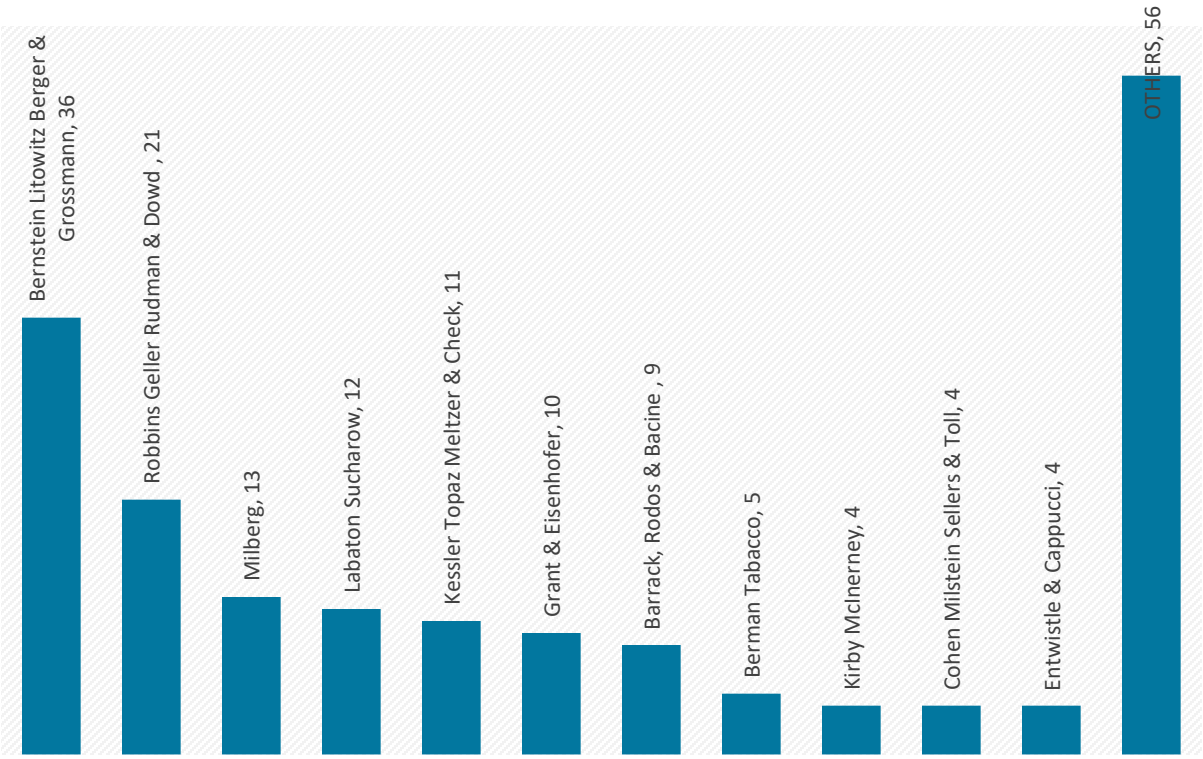


TOP 5 INSTITUTIONAL LEAD PLAINTIFFS PARTICIPATION

INSTITUTIONAL LEAD PLAINTIFF | CASE NAME	RANK	TOTAL SETTLEMENT AMOUNT	NUMBER OF SETTLEMENTS
State Teachers Retirement System of Ohio		**$ 5,417,300,000**	**7**
Bank of America Corporation	7	$ 2,425,000,000	
American International Group, Inc.	16	$ 1,009,500,000	
Merrill Lynch & Co., Inc.	36	$ 475,000,000	
Global Crossing, Ltd.	41	$ 447,800,000	
Federal Home Loan Mortgage Corp. (Freddie Mac)	44	$ 410,000,000	
Marsh & McLennan Companies, Inc.	45	$ 400,000,000	
Allergan, Inc.	74	$ 250,000,000	
Public Employees' Retirement System of Mississippi		**$ 2,332,750,000**	**5**
Merck & Co., Inc.	13	$ 1,062,000,000	
Schering-Plough Corp.	38	$ 473,000,000	
Merrill Lynch Mortgage Investors, Inc.	56	$ 315,000,000	
J.P. Morgan Acceptance Corp. I	67	$ 280,000,000	
The Mills Corp.	90	$ 202,750,000	
Ontario Teachers' Pension Plan Board		**$ 2,022,015,298**	**4**
Nortel Networks Corp. (II)	12	$ 1,074,265,298	
Teva Pharmaceutical Industries Limited	43	$ 420,000,000	
Williams Companies, Inc.	57	$ 311,000,000	
Washington Mutual, Inc.	84	$ 216,750,000	
New York State Common Retirement Fund		**$ 11,025,450,714**	**4**
WorldCom, Inc.	2	$ 6,194,100,714	
Cendant Corp.	3	$ 3,319,350,000	
McKesson HBOC Inc.	14	$ 1,052,000,000	
Raytheon Company	39	$ 460,000,000	
Ohio Public Employees Retirement System		**$ 4,292,300,000**	**4**

Bank of America Corporation	7	$ 2,425,000,000	
American International Group, Inc.	16	$ 1,009,500,000	
Global Crossing, Ltd.	41	$ 447,800,000	
Federal Home Loan Mortgage Corp. (Freddie Mac)	44	$ 410,000,000	
Teachers' Retirement System of Louisiana		**$ 4,186,000,000**	**4**
Tyco International, Ltd.	4	$ 3,200,000,000	
Pfizer, Inc.	33	$ 486,000,000	
Bristol-Myers Squibb Co.	60	$ 300,000,000	
WellCare Health Plans, Inc.	91	$ 200,000,000	

MOST FREQUENT LEAD COUNSEL IN THE SCAS TOP 100[2]



[2] Totals exceed 100 as a number of the SCAS Top 100 settlements include more than one law firm as lead counsel.

LEAD COUNSEL PARTICIPATION

Most Frequent Lead/Co-Lead Counsel in The SCAS Top 100

LEAD / CO-LEAD COUNSEL | CASE NAME	RANK	TOTAL SETTLEMENT AMOUNT
Bernstein Litowitz Berger & Grossmann		**$26,041,591,840**
WorldCom, Inc.	2	$ 6,194,100,714
Cendant Corp.	3	$ 3,319,350,000
Bank of America Corporation	7	$ 2,425,000,000
Nortel Networks Corp. (II)	12	$ 1,074,265,298
Merck & Co., Inc.	13	$ 1,062,000,000
McKesson HBOC Inc.	14	$ 1,052,000,000
HealthSouth Corp.	20	$ 804,500,000
Lehman Brothers Holdings, Inc.	22	$ 735,218,000
Citigroup Bonds	23	$ 730,000,000
Lucent Technologies, Inc.	24	$ 667,000,000
Wachovia Preferred Securities and Bond/Notes	25	$ 627,000,000
Bear Stearns Mortgage Pass-Through Certificates	30	$ 500,000,000
Wells Fargo & Company	34	$ 480,000,000
Schering-Plough Corp.	38	$ 473,000,000
Federal Home Loan Mortgage Corp. (Freddie Mac)	44	$ 410,000,000
Cobalt International Energy, Inc.	47	$ 389,600,000
Refco, Inc.	50	$ 358,300,000
Merrill Lynch Mortgage Investors, Inc.	56	$ 315,000,000
Williams Companies, Inc.	57	$ 311,000,000
DaimlerChrysler AG	60	$ 300,000,000
General Motors Company	60	$ 300,000,000
Bristol-Myers Squibb Co.	60	$ 300,000,000
El Paso Corporation	65	$ 285,000,000

J.P. Morgan Acceptance Corp. I	67	$	280,000,000
3Com Corp.	73	$	259,000,000
Allergan, Inc.	74	$	250,000,000
Signet Jewelers Limited	76	$	240,000,000
MF Global Holdings Ltd.	79	$	234,257,828
Genworth Financial, Inc.	83	$	219,000,000
Washington Mutual, Inc.	84	$	216,750,000
Merck & Co., Inc.	85	$	215,000,000
Wilmington Trust Corporation	88	$	210,000,000
Salix Pharmaceuticals, Ltd.	88	$	210,000,000
The Mills Corp.	90	$	202,750,000
WellCare Health Plans, Inc.	91	$	200,000,000
SCANA Corporation	96	$	192,500,000
Robbins Geller Rudman & Dowd			**$18,560,362,500**
Enron Corp.	1	$	7,242,000,000
Household International, Inc.	8	$	1,575,000,000
Valeant Pharmaceuticals International, Inc.	9	$	1,210,000,000
American Realty Capital Properties, Inc.	15	$	1,025,000,000
UnitedHealth Group, Inc.	18	$	925,500,000
Twitter, Inc.	19	$	809,500,000
HealthSouth Corp.	20	$	804,500,000
Wachovia Preferred Securities and Bond/Notes	25	$	627,000,000
Cardinal Health, Inc.	27	$	600,000,000
Countrywide Financial Corp.	30	$	500,000,000
Dynegy Inc.	37	$	474,050,000
Qwest Communications International, Inc.	42	$	445,000,000
Pfizer, Inc.	45	$	400,000,000
J.P. Morgan Acceptance Corp. I	48	$	388,000,000

First Solar, Inc.	51	$	350,000,000
GS Mortgage Securities Corp.	71	$	272,000,000
Massey Energy Company	72	$	265,000,000
HCA Holdings, Inc.	85	$	215,000,000
Motorola, Inc.	91	$	200,000,000
Kinder Morgan, Inc.	91	$	200,000,000
Snap, Inc.	99	$	32,812,500
Barrack, Rodos & Bacine			**$13,107,700,714**
WorldCom, Inc.	2	$	6,194,100,714
Cendant Corp.	3	$	3,319,350,000
McKesson HBOC Inc.	14	$	1,052,000,000
American International Group, Inc.	17	$	970,500,000
Merrill Lynch & Co., Inc.	36	$	475,000,000
Bank of America Corporation	53	$	335,000,000
DaimlerChrysler AG	60	$	300,000,000
3Com Corp.	73	$	259,000,000
The Mills Corp.	90	$	202,750,000
Milberg			**$9,353,855,304**
Tyco International, Ltd.	4	$	3,200,000,000
Nortel Networks Corp. (I)	10	$	1,142,775,308
Merck & Co., Inc.	13	$	1,062,000,000
Xerox Corp.	21	$	750,000,000
Lucent Technologies, Inc.	24	$	667,000,000
IPO Securities Litigation (Master Case)	29	$	585,999,996
Raytheon Company	39	$	460,000,000
Rite Aid Corp.	55	$	319,580,000
Oxford Health Plans Inc.	60	$	300,000,000
3Com Corp.	73	$	259,000,000

Sears, Roebuck & Co.	85	$	215,000,000
CMS Energy Corp.	91	$	200,000,000
MicroStrategy Inc.	96	$	192,500,000
Kessler Topaz Meltzer & Check			**$9,259,263,190**
Tyco International, Ltd.	4	$	3,200,000,000
Bank of America Corporation	7	$	2,425,000,000
Lehman Brothers Holdings, Inc.	22	$	735,218,000
Wachovia Preferred Securities and Bond/Notes	25	$	627,000,000
IPO Securities Litigation (Master Case)	29	$	585,999,996
Countrywide Financial Corp.	30	$	500,000,000
Tenet Healthcare Corp.	66	$	281,500,000
BNY Mellon, N.A.	67	$	280,000,000
Allergan, Inc.	74	$	250,000,000
Bernard L. Madoff Investment Securities LLC (I)	82	$	219,857,694
Snap, Inc.	99	$	154,687,500
Grant & Eisenhofer			**$6,207,722,944**
Tyco International, Ltd.	4	$	3,200,000,000
Pfizer, Inc.	33	$	486,000,000
Global Crossing, Ltd.	41	$	447,800,000
Marsh & McLennan Companies, Inc.	45	$	400,000,000
Refco, Inc.	50	$	358,300,000
General Motors Corp.	59	$	303,000,000
Oxford Health Plans Inc.	60	$	300,000,000
DaimlerChrysler AG	60	$	300,000,000
Merck & Co., Inc.	85	$	215,000,000
Safety-Kleen Corp.	95	$	197,622,944
Labaton Sucharow			**$5,093,400,000**
American International Group, Inc.	16	$	1,009,500,000

HealthSouth Corp.	20	$	804,500,000
Countrywide Financial Corp.	26	$	624,000,000
Schering-Plough Corp.	38	$	473,000,000
Waste Management Inc.	40	$	457,000,000
General Motors Corp.	59	$	303,000,000
Bear Stearns Companies, Inc.	64	$	294,900,000
El Paso Corporation	65	$	285,000,000
Massey Energy Company	72	$	265,000,000
WellCare Health Plans, Inc.	91	$	200,000,000
SCANA Corporation	96	$	192,500,000
Bristol-Myers Squibb Co.	100	$	185,000,000
Pomerantz			**$3,225,000,000**
Petroleo Brasileiro S.A. - Petrobras	5	$	3,000,000,000
Comverse Technology, Inc.	80	$	225,000,000
Kaplan Fox & Kilsheimer			**$3,159,000,000**
Bank of America Corporation	7	$	2,425,000,000
Merrill Lynch & Co., Inc.	36	$	475,000,000
3Com Corp.	73	$	259,000,000
Heins Mills & Olson			**$2,500,000,000**
AOL Time Warner, Inc.	6	$	2,500,000,000
Stull Stull & Brody			**$2,137,999,996**
Merck & Co., Inc.	13	$	1,062,000,000
IPO Securities Litigation (Master Case)	29	$	585,999,996
BankAmerica Corp.	32	$	490,000,000
Entwistle & Cappucci			**$1,989,600,000**
Royal Ahold, N.V.	11	$	1,100,000,000
Cobalt International Energy, Inc.	47	$	389,600,000
DaimlerChrysler AG	60	$	300,000,000

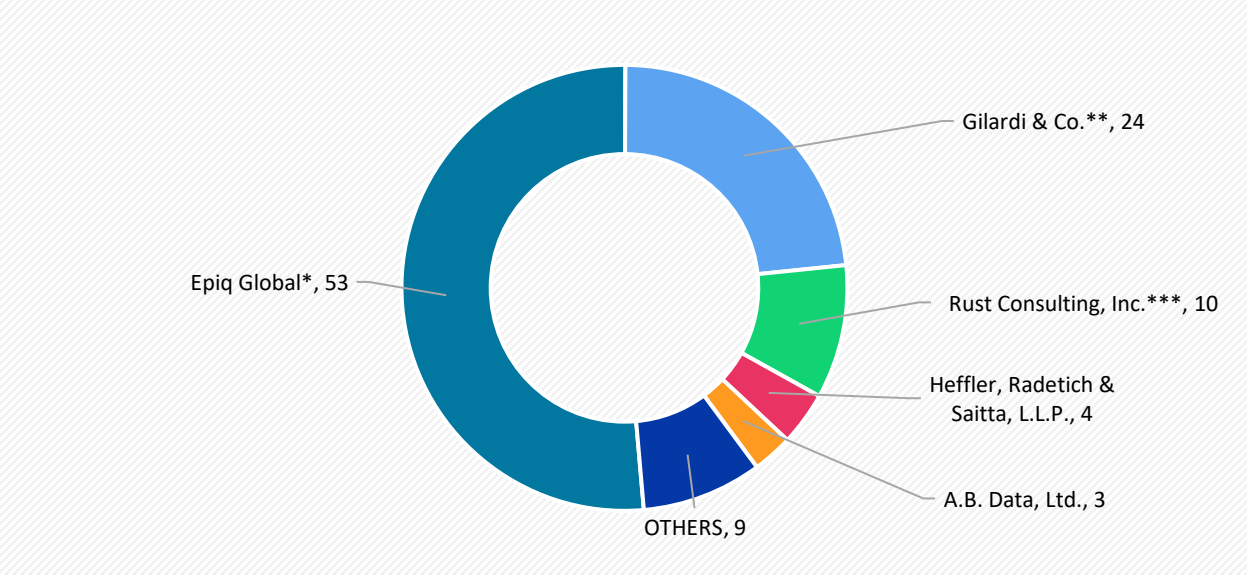
CMS Energy Corp.	91	$	200,000,000
Berman Tabacco			**$1,975,900,000**
Xerox Corp.	21	$	750,000,000
IndyMac Mortgage Pass-Through Certificates	52	$	346,000,000
Bristol-Myers Squibb Co.	60	$	300,000,000
Bear Stearns Companies, Inc.	64	$	294,900,000
El Paso Corporation	65	$	285,000,000
Kirby McInerney			**$1,662,725,000**
Citigroup, Inc.	28	$	590,000,000
Adelphia Communications Corp.	35	$	478,725,000
Cendant Corp. (PRIDES) II	49	$	374,000,000
Waste Management Inc.	81	$	220,000,000
Cohen Milstein Sellers & Toll			**$1,610,000,000**
Countrywide Financial Corp.	30	$	500,000,000
Bear Stearns Mortgage Pass-Through Certificates	30	$	500,000,000
RALI Mortgage (Asset-Backed Pass-Through Certificates)	53	$	335,000,000
HarborView Mortgage Loan Trust	69	$	275,000,000
Brower Piven			**$1,062,000,000**
Merck & Co., Inc.	13	$	1,062,000,000
Berger & Montague			**$1,014,580,000**
Merrill Lynch & Co., Inc.	36	$	475,000,000
Rite Aid Corp.	55	$	319,580,000
Waste Management Inc.	81	$	220,000,000
Hahn Loeser & Parks			**$1,009,500,000**
American International Group, Inc.	16	$	1,009,500,000
Bernstein Liebhard			**$985,999,996**
IPO Securities Litigation (Master Case)	29	$	585,999,996
Marsh & McLennan Companies, Inc.	45	$	400,000,000

The Miller Law Firm			**$970,500,000**
American International Group, Inc.	17	$	970,500,000
Abbey Spanier Rodd Abrams & Paradis			**$968,725,000**
BankAmerica Corp.	32	$	490,000,000
Adelphia Communications Corp.	35	$	478,725,000
Motley Rice			**$809,500,000**
Twitter, Inc.	19	$	809,500,000
Cunningham Bounds			**$804,500,000**
HealthSouth Corp.	20	$	804,500,000
Chitwood Harley Harnes			**$790,000,000**
BankAmerica Corp.	32	$	490,000,000
Oxford Health Plans Inc.	60	$	300,000,000
Wolf Haldenstein Adler Freeman & Herz			**$778,499,996**
IPO Securities Litigation (Master Case)	29	$	585,999,996
MicroStrategy Inc.	96	$	192,500,000
Johnson & Perkinson			**$750,000,000**
Xerox Corp.	21	$	750,000,000
Girard Gibbs			**$735,218,000**
Lehman Brothers Holdings, Inc.	22	$	735,218,000
Wolf Popper			**$705,250,000**
J.P. Morgan Acceptance Corp. I	67	$	280,000,000
Bernard L. Madoff Investment Securities LLC (II)	77	$	235,250,000
Motorola, Inc.	98	$	190,000,000
Howard B. Sirota, Esq.	**29**		**$585,999,996**
IPO Securities Litigation (Master Case)	29	$	585,999,996
Green Schaaf & Jacobson			**$490,000,000**
BankAmerica Corp.	32	$	490,000,000
Lite, DePalma, Greenberg & Rivas			**$471,500,000**

Tenet Healthcare Corp.	66	$	281,500,000
Motorola, Inc.	98	$	190,000,000
Bleichmar Fonti Tountas & Auld			**$453,257,828**
MF Global Holdings Ltd.	79	$	234,257,828
Genworth Financial, Inc.	83	$	219,000,000
Bleichmar Fonti & Auld			**$420,000,000**
Teva Pharmaceutical Industries Limited	43	$	420,000,000
Barrett & Weber			**$410,000,000**
Federal Home Loan Mortgage Corp. (Freddie Mac)	44	$	410,000,000
Waite, Schneider, Bayless & Chesley			**$410,000,000**
Federal Home Loan Mortgage Corp. (Freddie Mac)	44	$	410,000,000
Francis Law			**$310,000,000**
Caremark, Rx, Inc. f/k/a MedPartners, Inc.	58	$	310,000,000
Somerville			**$310,000,000**
Caremark, Rx, Inc. f/k/a MedPartners, Inc.	58	$	310,000,000
Hare, Wynn, Newell & Newton			**$310,000,000**
Caremark, Rx, Inc. f/k/a MedPartners, Inc.	58	$	310,000,000
Nix, Patterson & Roach			**$280,000,000**
BNY Mellon, N.A.	67	$	280,000,000
Bragar Eagel & Squire			**$275,000,000**
Activision Blizzard, Inc.	69	$	275,000,000
Friedlander & Gorris			**$275,000,000**
Activision Blizzard, Inc.	69	$	275,000,000
The Rosen Law Firm			**$250,000,000**
Alibaba Group Holding Limited	74	$	250,000,000
Boies, Schiller & Flexner			**$235,250,000**
Bernard L. Madoff Investment Securities LLC (II)	77	$	235,250,000
Lovell Stewart Halebian Jacobson			**$235,250,000**

Bernard L. Madoff Investment Securities LLC (II)	77	$	235,250,000
Hagens Berman Sobol Shapiro			**$235,000,000**
Charles Schwab & Co., Inc.	78	$	235,000,000
Abbey, Gardy & Squitieri			**$220,000,000**
Waste Management Inc.	81	$	220,000,000
Lowey Dannenberg Cohen & Hart			**$219,857,694**
Bernard L. Madoff Investment Securities LLC (I)	82	$	219,857,694
Saxena White			**$210,000,000**
Wilmington Trust Corporation	88	$	210,000,000
Chimicles & Tikellis			**$200,000,000**
Kinder Morgan, Inc.	91	$	200,000,000
The Nygaard Law Firm			**$200,000,000**
Kinder Morgan, Inc.	91	$	200,000,000
Block & Leviton			**$32,812,500**
Snap, Inc.	99	$	32,812,500
Bottini & Bottini			**$32,812,500**
Snap, Inc.	99	$	32,812,500

MOST FREQUENT CLAIMS ADMINISTRATOR[3]



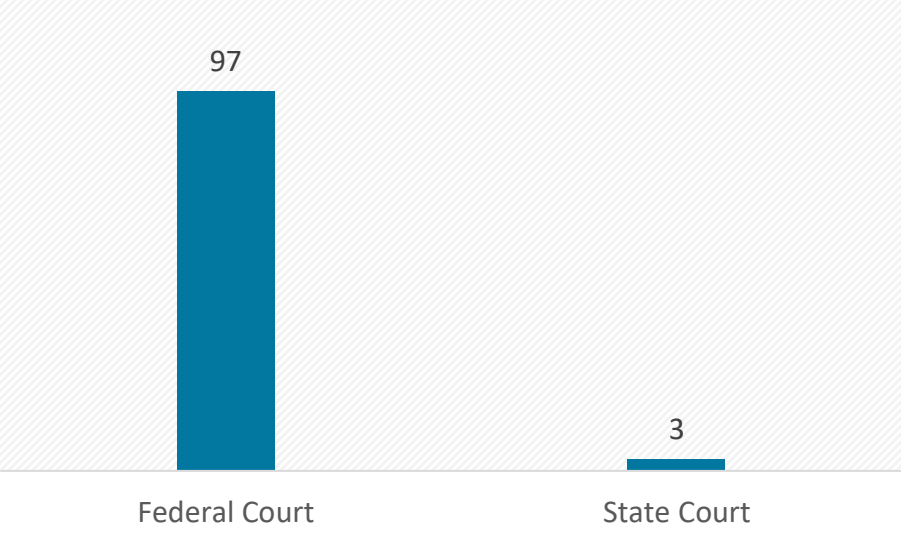
*Includes settlements administered by Garden City Group
**Includes settlements administered by KCC
***Includes settlements administered by Complete Claims Solution

LARGEST SETTLEMENT BY MOST ACTIVE CLAIMS ADMINISTRATOR

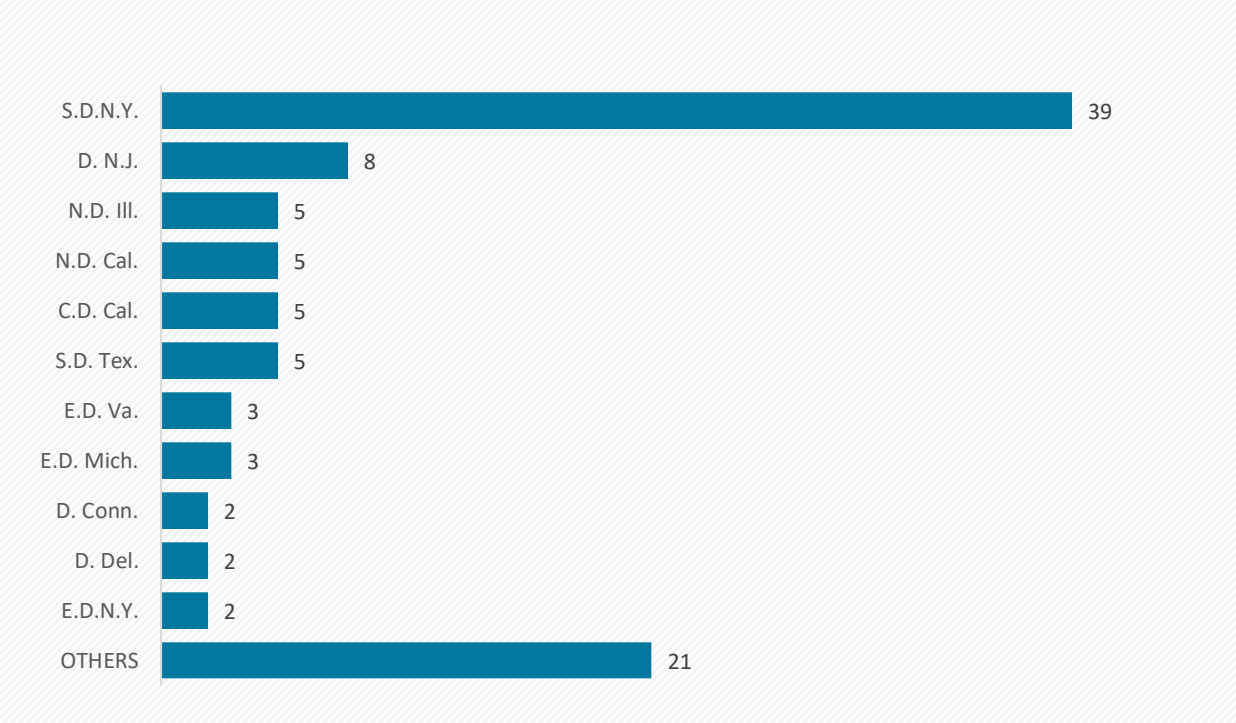
CLAIMS ADMINISTRATOR	CASE NAME	TOTAL SETTLEMENT AMOUNT
Gilardi & Co.	Enron Corp.	$7,242,000,000
Epiq Global	WorldCom, Inc.	$6,194,100,714
Heffler Radetich & Saitta	Cendant Corp.	$3,319,350,000
Rust Consulting	American International Group, Inc.	$1,009,500,000
A.B. Data Ltd.	El Paso Corporation	$285,000,000

[3] Totals exceed 100 as several partial settlements were administered by another Claims Administrator.

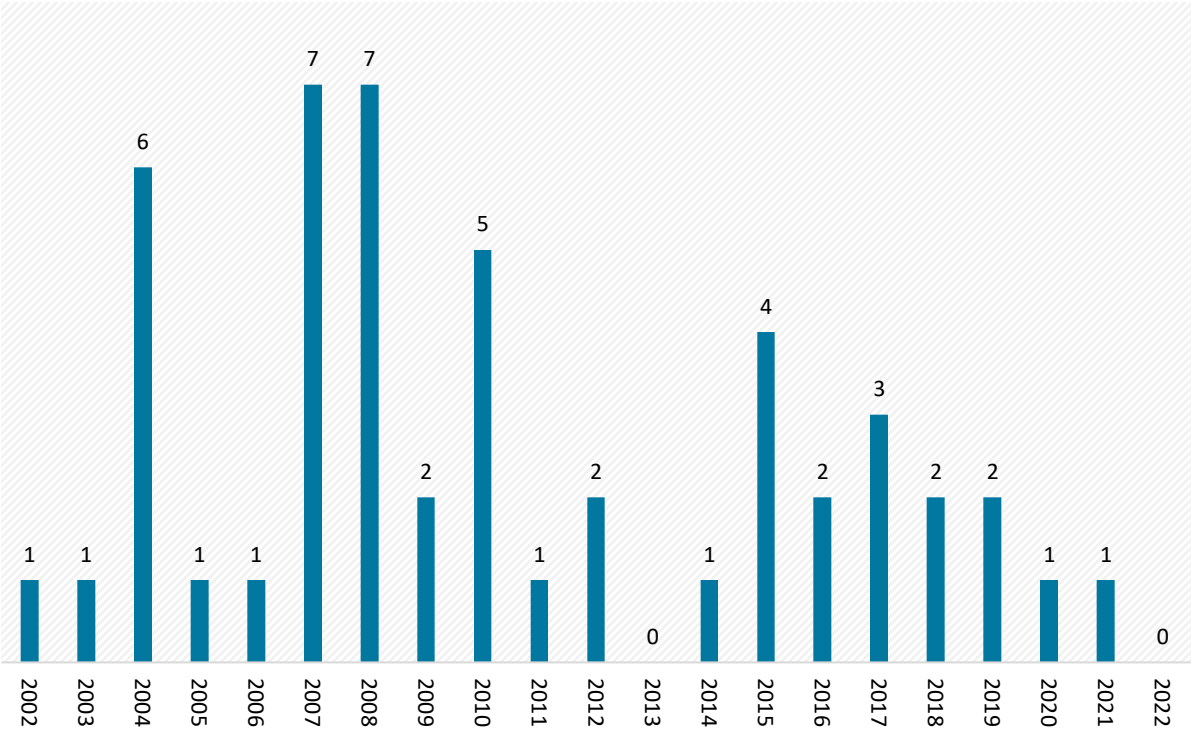
COURT VENUE
CASES IN THE TOP 100 – JURISDICTION TYPE



CASES IN THE TOP 100
MOST FREQUENT COURT VENUE



NUMBER OF SETTLEMENTS BY YEAR IN THE TOP 50 SEC DISGORGEMENTS[4]



[4] ISS SCAS tracks SEC Disgorgements (Fair Fund settlements) in real-time, however does not officially include these cases within the "Settlement" stage until the Plan of Distribution becomes public.

TOP 50 SEC DISGORGEMENTS

RANK	SETTLEMENT NAME	SETTLEMENT YEAR	TOTAL SETTLEMENT AMOUNT
1	American International Group, Inc.	2008	$800,000,000
2	WorldCom, Inc.	2003	$750,000,000
3	Wyeth/Elan Corporation, plc	2016	$601,832,697
4	BP p.l.c.	2012	$525,000,000
5	Wells Fargo & Company	2020	$500,000,000
6	Stanford International Bank Ltd.	2019	$463,753,165
7	Enron Corp.	2008	$450,000,000
8	Banc of America Capital Management, LLC	2007	$375,000,000
9	Federal National Mortgage Association	2007	$350,000,001
10	Invesco Funds	2008	$325,000,000
11	Time Warner Inc.	2005	$308,000,000
12	Citigroup Global Markets Inc.	2017	$287,550,000
13	Morgan Stanley & Co. LLC	2014	$275,000,000
14	Prudential Securities	2010	$270,000,000
15	Qwest Communications International Inc.	2006	$252,869,388
16	Alliance Capital Management L.P.	2008	$250,000,000
16	PBHG Mutual Funds	2004	$250,000,000
16	Bear Stearns	2008	$250,000,000
19	NYSE Specialist Firms	2004	$247,557,023
20	Jay Peak Receivership Entities	2019	$236,834,964
21	Massachusetts Financial Services Co.	2007	$225,629,143
22	J.P. Morgan Securities LLC	2017	$222,415,536
23	JPMorgan Chase & Co.	2015	$200,000,000
23	General Electric Company	2020	$200,000,000
25	Computer Sciences Corporation	2015	$190,948,984
26	Millennium Partners, L.P.	2007	$180,575,005
27	Putnam Investment Management, LLC	2007	$153,524,387
28	Weatherford International, plc	2016	$152,204,174
29	Bristol-Myers Squibb Co.	2004	$150,000,001
29	Bank of America Corporation	2010	$150,000,001
31	Strong Capital Management, Inc.	2009	$140,750,000

RANK	SETTLEMENT NAME	SETTLEMENT YEAR	TOTAL SETTLEMENT AMOUNT
32	Columbia Funds	2007	$140,000,000
33	American International Group, Inc.	2004	$126,366,000
34	Canadian Imperial Holdings, Inc. / CIBC World Markets Corp.	2010	$125,000,000
35	Royal Dutch Petroleum / Shell Transport	2008	$120,000,000
36	Charles Schwab Investment	2011	$110,000,000
37	Convergex Global Markets	2015	$109,440,738
38	Credit Suisse Securities	2012	$101,747,769
39	Capital Consultants, LLC	2002	$100,000,000
39	HealthSouth Corp.	2007	$100,000,000
39	Janus Capital Management LLC	2008	$100,000,000
39	Facebook, Inc.	2019	$100,000,000
43	Adelphia Communications Corp.	2009	$95,000,000
44	Edward D. Jones & Co.	2004	$75,000,000
45	J.P. Morgan Securities LLC	2017	$74,500,000
46	Federated Funds	2010	$72,000,000
47	American Skandia Investment Services, Inc.	2010	$68,000,000
48	Knight Securities, L.P.	2004	$66,841,732
49	The Kraft Heinz Company	2021	$62,314,211
50	Focus Media Holding Limited	2015	$55,627,865

GLOSSARY

CLAIMS ADMINISTRATOR	An entity selected by the Lead Counsel or appointed by the court to manage the settlement notification and claim process.
DISGORGEMENT	A penalty or repayment of ill-gotten gains that is imposed by the United States Securities and Exchange Commission on wrong-doers. These are often referred to as Fair Fund settlements.
FINAL SETTLEMENTS	Settlements that received final approval from the court.
INSTITUTIONAL LEAD PLAINTIFF	An institutional shareholder or group of institutional shareholders appointed by the court to represent the interests of a class or classes of similarly situated shareholders.
LEAD COUNSEL	Law firm, or lawyer, appointed by the court, that prosecutes a class action on behalf of the class members.
PARTIAL SETTLEMENT	A preliminary agreement between some of the identified defendants in the action.
PSLRA (PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995)	Legislation passed by Congress that implemented several substantive changes in the United States, affecting certain cases brought under the federal securities laws, including changes related to pleading, discovery, liability, class representation, and awards fees and expenses.
SETTLEMENT YEAR	Corresponds to the year the settlement, or the most recent partial settlement, received final approval from the court.
TOTAL SETTLEMENT AMOUNT	Refers to the sum of the settlement fund or the gross settlement fund approved by the court.

Empowering Investors to Mitigate Risk, Minimize Costs, and Effectively Maximize Recoveries.

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EXHIBIT 4

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2022 Review and Analysis

Table of Contents

Figures and Appendices

Analyses in this report are based on 2,116 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2022. See page 16 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

2022 Highlights

In 2022, the number of settled cases reached its highest level in 15 years, increasing 21% relative to 2021. The median settlement amount, median "simplified tiered damages," and median total assets of the defendant issuer also rose dramatically.[1]

- In 2022, the number of securities class action settlements increased to 105 with a total settlement value of over $3.8 billion, compared to 87 settlements in 2021 with a total value of $1.9 billion. (page 3)
- The median settlement amount of $13.0 million represents an increase of 46% from 2021, while the average settlement amount ($36.2 million) increased by 63%. (page 4)
- The $3.8 billion total settlement dollars were 97% higher than the prior year. (page 3)
- There were eight mega settlements (equal to or greater than $100 million), ranging from $100 million to $809.5 million. (page 3)
- The increase in the proportion of "midsize" settlement amounts ($10 million to $50 million) was accompanied by a decrease in the proportion of cases that settled for less than $10 million. (page 4)
- Median "simplified tiered damages" increased more than 125% and reached a record high.[2] (page 5)
- Median "disclosure dollar losses"[3] grew by more than 160%, also reaching an all-time high. (page 5)
- Compared to defendant firms involved in cases that settled in 2021, defendant firms involved in 2022 settlements were 97% larger, as measured by median total assets. (page 5)
- The historically low rate of settled cases involving a corresponding action by the U.S. Securities and Exchange Commission (SEC) observed in 2021 persisted in 2022, remaining below 9%. (page 11)

Figure 1: Settlement Statistics

(Dollars in millions)

	2017–2021	2021	2022
Number of Settlements	395	87	105
Total Amount	$16,714.3	$1,932.4	$3,805.5
Minimum	$0.3	$0.7	$0.7
Median	$10.2	$8.9	$13.0
Average	$42.3	$22.2	$36.2
Maximum	$3,496.8	$202.5	$809.5

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

Author Commentary

Findings

The year 2022 was a record year for settlement activity. The number of securities class action settlements in 2022 increased sharply from 2021 and reached levels not observed since 2007. This sharp increase was accompanied by dramatic growth in case settlement amounts, "simplified tiered damages" (our rough proxy for potential shareholder losses), and the size of issuer defendant firms.

The historically high number of settlements in 2022 can be explained by the elevated number of case filings in 2018–2020, when over 70% of these settled cases were filed.

The median settlement amount is the highest since 2018. This was likely driven by the record-high level of "simplified tiered damages," an estimate of potential shareholder losses that our research finds is the single most important factor in explaining settlement amounts.

The all-time-high median "simplified tiered damages" reflects a number of factors such as larger issuer defendants (measured by the company's total assets) and larger disclosure dollar losses (a measure of the change in the issuer defendant's market capitalization following the class-ending alleged corrective disclosure). Institutional investors are more likely to serve as lead plaintiffs in larger cases, i.e., cases with relatively high "simplified tiered damages." Consistent with this observation, institutional investor involvement as lead plaintiffs for 2022 settled cases was higher than the prior year and the 2017–2021 average. Larger cases also tend to take longer to settle, and accordingly, we observe an increase in the median time to settlement in 2022 relative to prior years.

2022 was an interesting year as settlement activity reached historically high levels across several dimensions, including the number and size of settlements, and a record-high for our proxy for potential shareholder losses.

Dr. Laarni T. Bulan
Principal, Cornerstone Research

In contrast to the historic highs, settlements in relation to our proxy for potential shareholder losses declined sharply. In particular, both the median and average settlement as a percentage of "simplified tiered damages" in 2022 fell to their lowest levels among post–Reform Act years. These low levels are consistent with a low presence in 2022 of factors often associated with higher settlement amounts, such as the presence of an SEC action, criminal charges, or accounting irregularities.[4]

Securities class action settlements in 2022 involved substantially larger cases with larger issuer defendant firms. Overall, these cases took longer to resolve and reached more advanced litigation stages before settlement than in prior years.

Dr. Laura E. Simmons
Senior Advisor, Cornerstone Research

Looking Ahead

In light of the reduced level in the number of securities class action case filings in 2021–2022, we may begin to see a slowdown or flattening out in settlement activity in the upcoming years,[5] absent a decrease in dismissal rates.

Given that SEC enforcement actions have tended to increase subsequent to when a new SEC Chair is sworn in (which last occurred in 2021), we may also begin to see a reversal in the frequency of corresponding SEC actions among settled cases in the near term. For additional details, see Cornerstone Research's *SEC Enforcement Activity: Public Company and Subsidiaries—FY 2022 Update*.

As discussed in Cornerstone Research's *Securities Class Action Filings—2022 Year in Review*, certain issues have emerged as focus areas in securities class actions. In particular, 26% of all core federal filings in 2020–2022 were related to special purpose acquisition company (SPAC), COVID-19, or cryptocurrency matters. While very few of these types of cases have settled to date, we expect increased settlement activity for these cases in the future.

—Laarni T. Bulan and Laura E. Simmons

Total Settlement Dollars

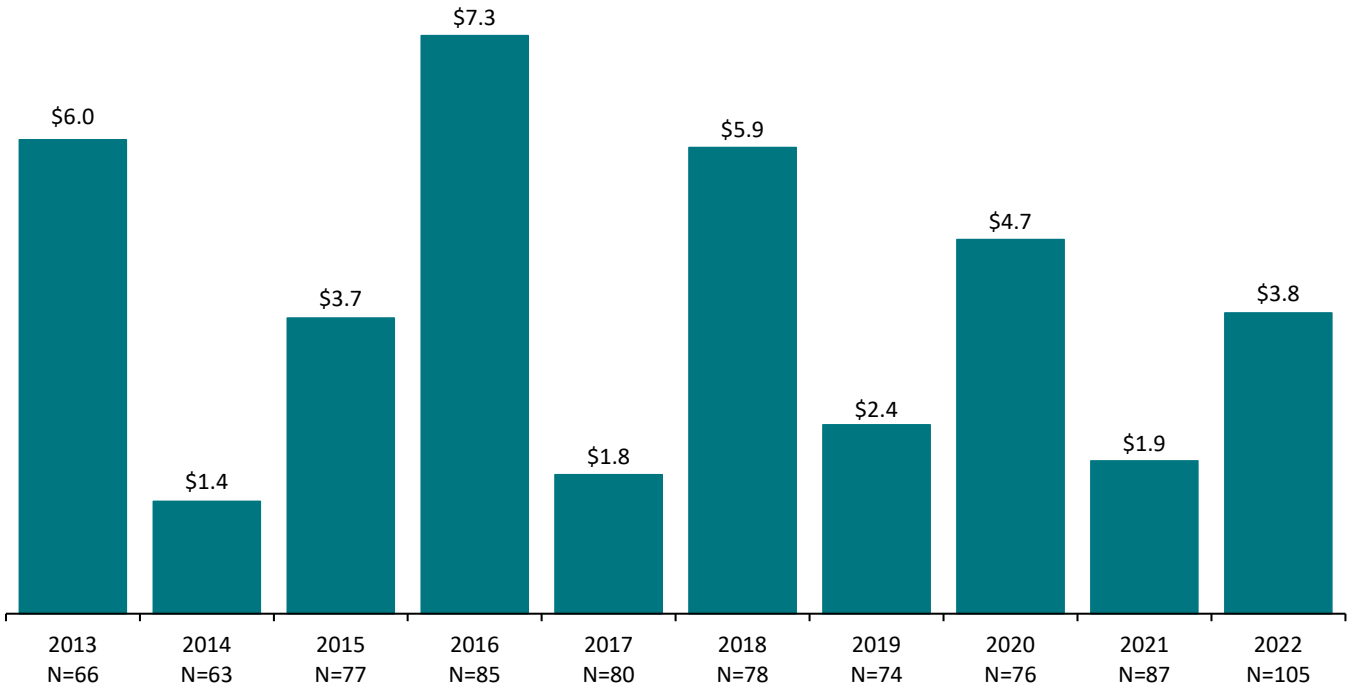
As has been observed in prior years, the presence or absence of just a few very large settlements can have a substantial effect on total settlement dollars for a given year.

- The number of settlements in 2022 (105 cases) continued the upward trend since 2019 and represented a 38% increase from the prior nine-year average (76 cases).
- An increase in the number of mega settlements (i.e., settlements equal to or greater than $100 million) contributed to total settlement dollars nearly doubling in 2022 compared to the prior year.
- There were eight mega settlements in 2022, ranging from $100 million to $809.5 million. Eight such settlements is the highest number since 2016.
- A decline in the proportion of very small settlements further contributed to the growth in total settlement dollars. Only 23% of settlements in 2022 were for less than $5 million, compared to 33% of cases settled in the prior nine years.

The number of settlements in 2022 was the highest number since 2007.

Figure 2: Total Settlement Dollars
2013–2022

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases.

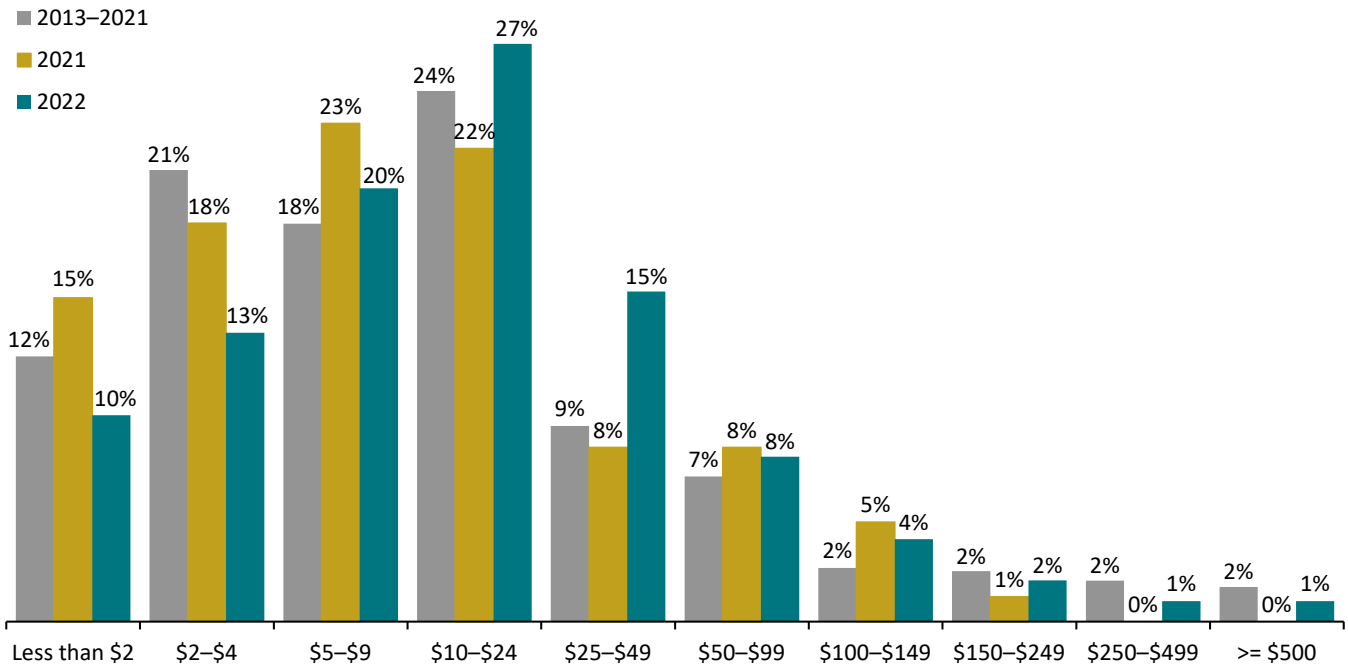
Settlement Size

- The median settlement amount in 2022 was $13.0 million, a 46% increase from 2021 and a 34% increase from the prior nine-year median. Median values provide the midpoint in a series of observations and are less affected than averages by outlier data.
- The average settlement amount in 2022 was $36.2 million, a 63% increase from 2021. *(See Appendix 1 for an analysis of settlements by percentiles.)*
- In 2022, 42% of cases settled for between $10 million and $50 million, compared to only 30% in 2021 and 34% in 2013–2021.

The median settlement amount in 2022 was the highest since 2018.

- The increase in the proportion of these "midsize" settlement amounts ($10 million to $50 million) was accompanied by a decrease in the proportion of cases that settled for less than $10 million—43% in 2022 compared to 56% in 2021 and 51% in the prior nine years.

Figure 3: Distribution of Settlements
2013–2022
(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

Type of Claim

Rule 10b-5 Claims and "Simplified Tiered Damages"

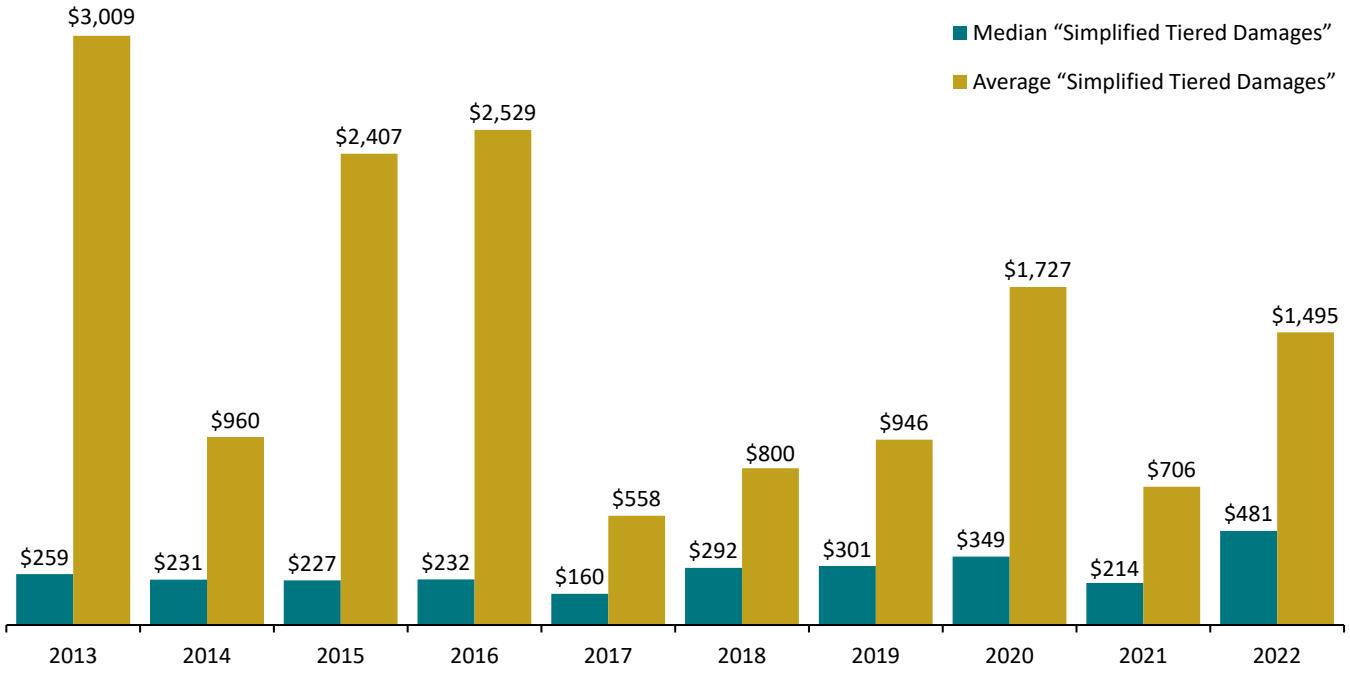
"Simplified tiered damages" uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.[6]

Cornerstone Research's analysis finds this measure to be the most important factor in estimating settlement amounts.[7] However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

- Similar to settlement amounts, the median "simplified tiered damages" in 2022 increased 125% compared to 2021 and was over 100% higher than the median of settled cases for the prior nine years.
- In 2022, nearly half of settlements with Rule 10b-5 claims involved "simplified tiered damages" over $500 million, an all-time high.
- Higher "simplified tiered damages" are typically associated with larger issuer defendants. Consistent with this, the median total assets of issuer defendants in 2022 settled cases was 97% higher than the median total assets for 2021 settled cases.
- Higher "simplified tiered damages" are also generally associated with larger disclosure dollar losses. In 2022, the median DDL grew by more than 160% compared to 2021, reaching an all-time high.

Median "simplified tiered damages" reached an all-time high in 2022.

Figure 4: Median and Average "Simplified Tiered Damages" in Rule 10b-5 Cases
2013–2022
(Dollars in millions)

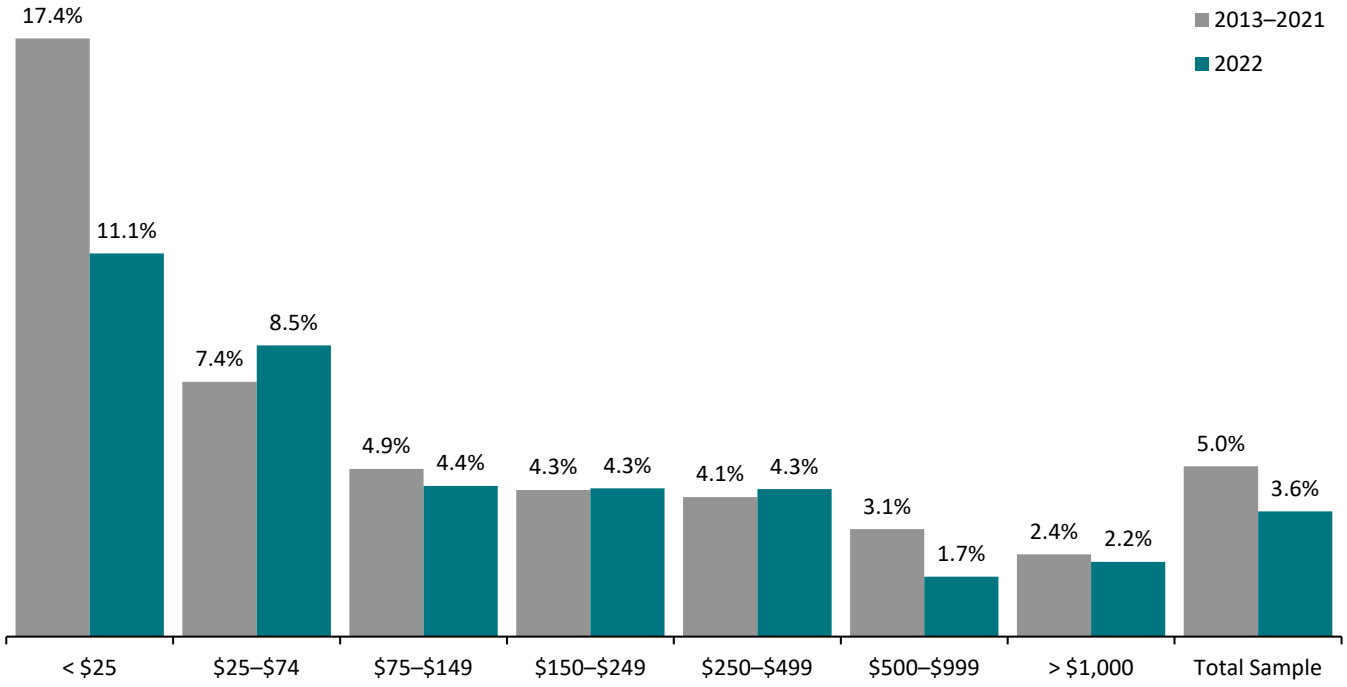


Note: "Simplified tiered damages" are adjusted for inflation based on class period end dates for common stock only; 2022 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

- Only 4% of settlements in 2022 had "simplified tiered damages" less than $25 million, the lowest observed to date.
- Cases with smaller "simplified tiered damages" are more likely to be associated with issuers that had been delisted from a major exchange and/or declared bankruptcy prior to settlement. In 2022, the percentage of such issuers for settled cases was at an all-time low (11%).
- The 2022 median and average settlement as a percentage of "simplified tiered damages" of 3.6% and 5.4%, respectively, are all-time lows. *(See Appendix 5 for additional information on median and average settlements as a percentage of "simplified tiered damages.")*

Figure 5: Median Settlement as a Percentage of "Simplified Tiered Damages" by Damages Ranges in Rule 10b-5 Cases 2013–2022

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

’33 Act Claims and “Simplified Statutory Damages”

For Securities Act of 1933 (’33 Act) claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—potential shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as “simplified statutory damages.” Only the offered shares are assumed to be eligible for damages.[8]

- In 2022, there were nine settlements for cases with only ’33 Act claims, in line with the average from 2017 to 2020 and well below the historically high number of 16 settlements observed in 2021.
- The median settlement as a percentage of simplified statutory damages in 2022 and 2021 were 4.7% and 4.4%, respectively—the lowest levels since 2002. *(See Appendix 6 for additional information on median and average settlements as a percentage of “simplified statutory damages.”)*
- The average settlement amount for cases with only ’33 Act claims was $7.3 million in 2022, compared to $14.9 million during 2013-2021.

In 2022, the median settlement amount for cases with only ’33 Act claims was $7.0 million, the lowest since 2013.

Figure 6: Settlements by Nature of Claims
2013–2022

(Dollars in millions)

	Number of Settlements	Median Settlement	Median “Simplified Statutory Damages”	Median Settlement as a Percentage of “Simplified Statutory Damages”
Section 11 and/or Section 12(a)(2) Only	82	$9.2	$145.2	8.7%

	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	123	$15.4	$355.7	6.3%
Rule 10b-5 Only	581	$9.0	$250.1	4.5%

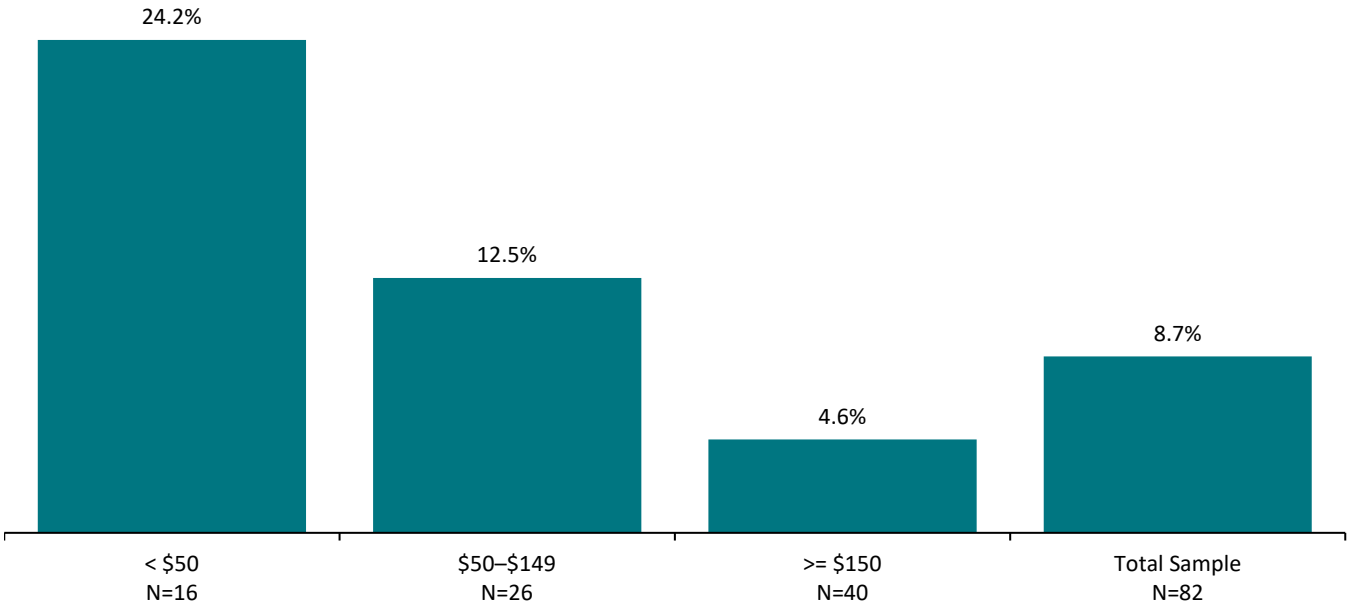
Note: Settlement dollars and damages are adjusted for inflation; 2022 dollar equivalent figures are presented.

- Settlements as a percentage of the simplified proxies for potential shareholder losses used in this report are typically smaller for cases that have larger estimated damages. As with cases with Rule 10b-5 claims, this finding holds for cases with only '33 Act claims.
- In the past decade, over 85% of the settled '33 Act claim cases involved an underwriter (or underwriters) as a named codefendant.
- Over 80% of '33 Act claim cases that settled in 2013–2022 involved an initial public offering (IPO).

Consistent with the lower median settlement amount among '33 Act claim cases, the median "simplified statutory damages" in 2022 declined by 61% from the median in 2021 and was the lowest since 2016.

Figure 7: Median Settlement as a Percentage of "Simplified Statutory Damages" by Damages Ranges in '33 Act Claim Cases 2013–2022

(Dollars in millions)



Jurisdictions of Settlements of '33 Act Claim Cases

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
State Court	1	0	2	4	5	4	4	7	6	6
Federal Court	7	2	2	6	3	4	5	1	10	3

Note: "N" refers to the number of cases. This analysis excludes cases alleging Rule 10b-5 claims..

Analysis of Settlement Characteristics

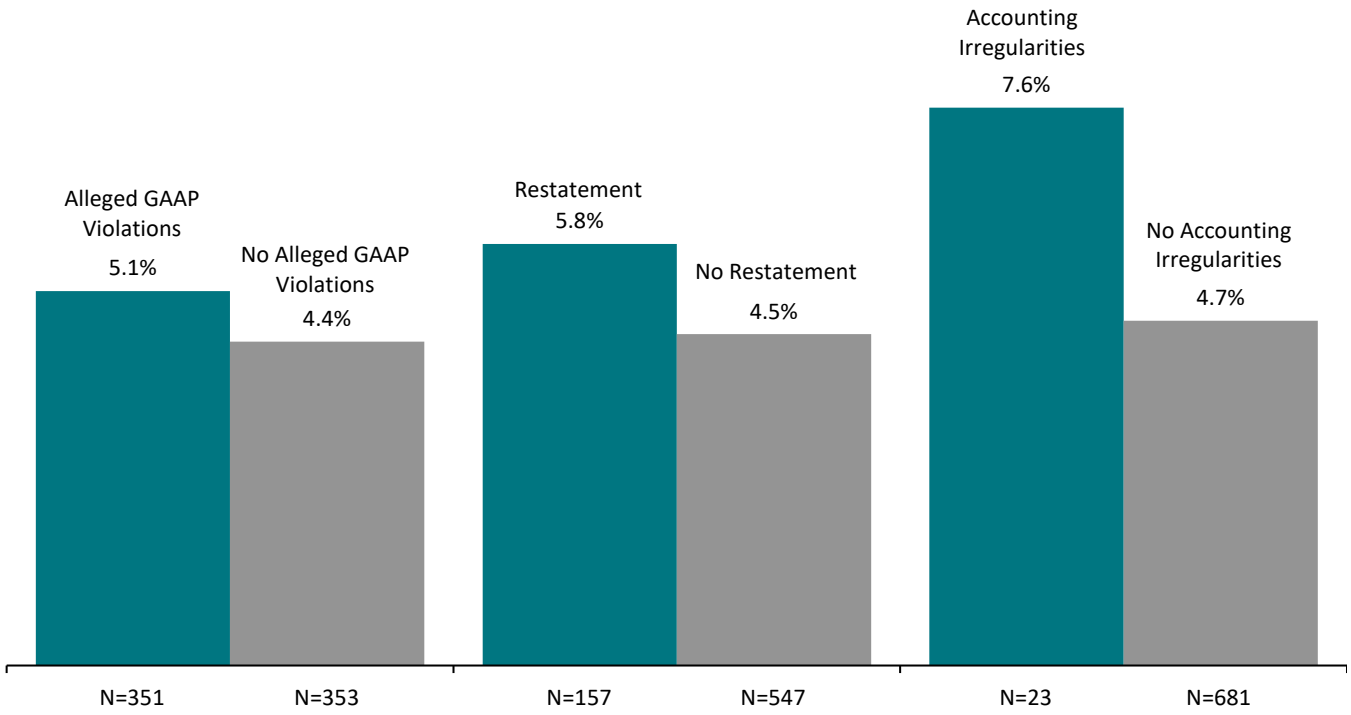
GAAP Violations

This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.[9] For further details regarding settlements of accounting cases, see Cornerstone Research's annual report on *Accounting Class Action Filings and Settlements*.[10]

- For the first time since 2017, the median settlement amount for cases involving GAAP allegations was larger than that for non-GAAP cases. Notably, in 2022 the median settlement amount for GAAP cases was more than double that of non-GAAP cases.
- As noted in prior years, settlements as a percentage of "simplified tiered damages" for cases involving GAAP allegations are typically higher than for non-GAAP cases. This result has continued despite a relatively low number of cases involving a financial restatement. For example, only 11% of settlements in 2022 involved a restatement of financial statements.
- Auditor codefendants were involved in only 3% of settled cases, consistent with 2021 but substantially lower than the average from 2013 to 2021.
- The infrequency of cases alleging accounting irregularities continued in 2022 at less than 2% of settled cases.

The proportion of settled cases in 2022 with Rule 10b-5 claims alleging GAAP violations remained at a historically low level.

Figure 8: Median Settlement as a Percentage of "Simplified Tiered Damages" and Allegations of GAAP Violations
2013–2022



Note: "N" refers to the number of cases. This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

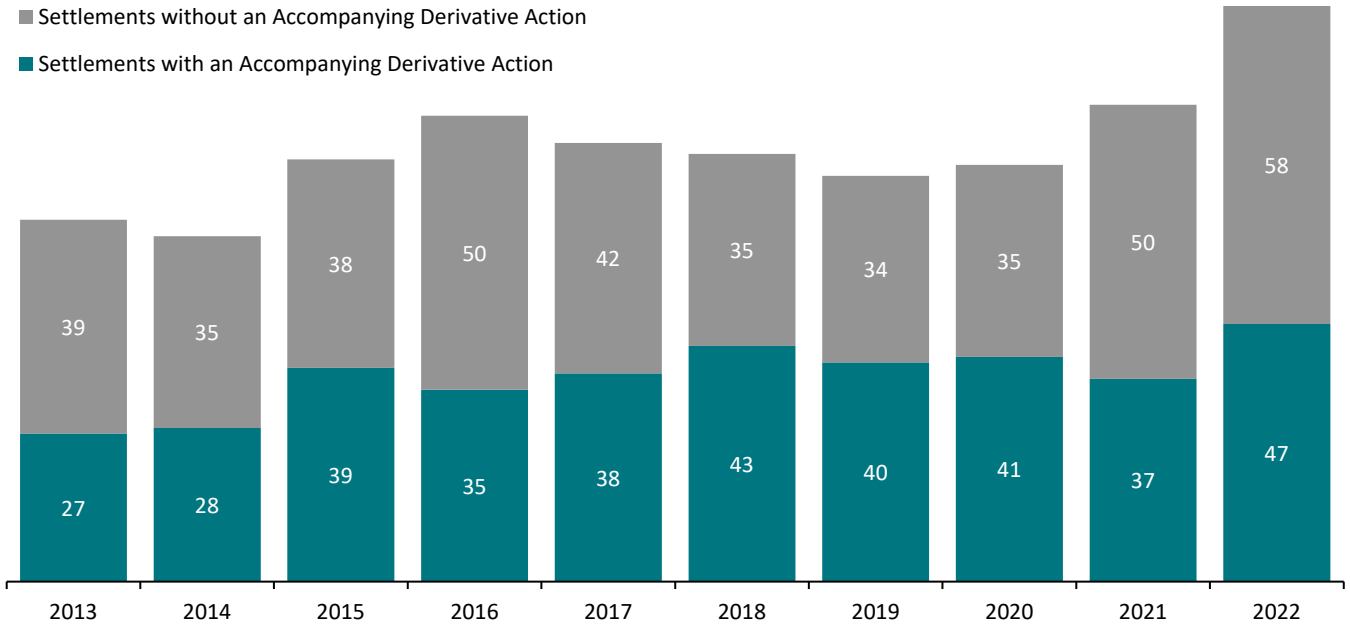
Derivative Actions

- Securities class actions often involve accompanying (or parallel) derivative actions with similar claims, and such cases have historically settled for higher amounts than securities class actions without corresponding derivative matters.[11]
- In 2022, the median settlement amount for cases with an accompanying derivative action was approximately 28% higher than for cases without ($14.1 million versus $11.0 million, respectively).
- For cases settled during 2018–2022, 38% of parallel derivative suits were filed in Delaware. California and New York were the next most common venues for such actions, representing 22% and 15% of such settlements, respectively.

Although the proportion of cases involving accompanying derivative actions in 2022 was higher compared to 2021, it was below the average for 2018–2021.

- It is commonly understood that most parallel derivative suits do not settle for monetary amounts (other than plaintiffs' attorney fees). However, the likelihood of a monetary settlement among parallel derivative actions is higher when the securities class action settlement is large, as shown in Cornerstone Research's *Parallel Derivative Action Settlement Outcomes*.[12]

Figure 9: Frequency of Derivative Actions
2013–2022



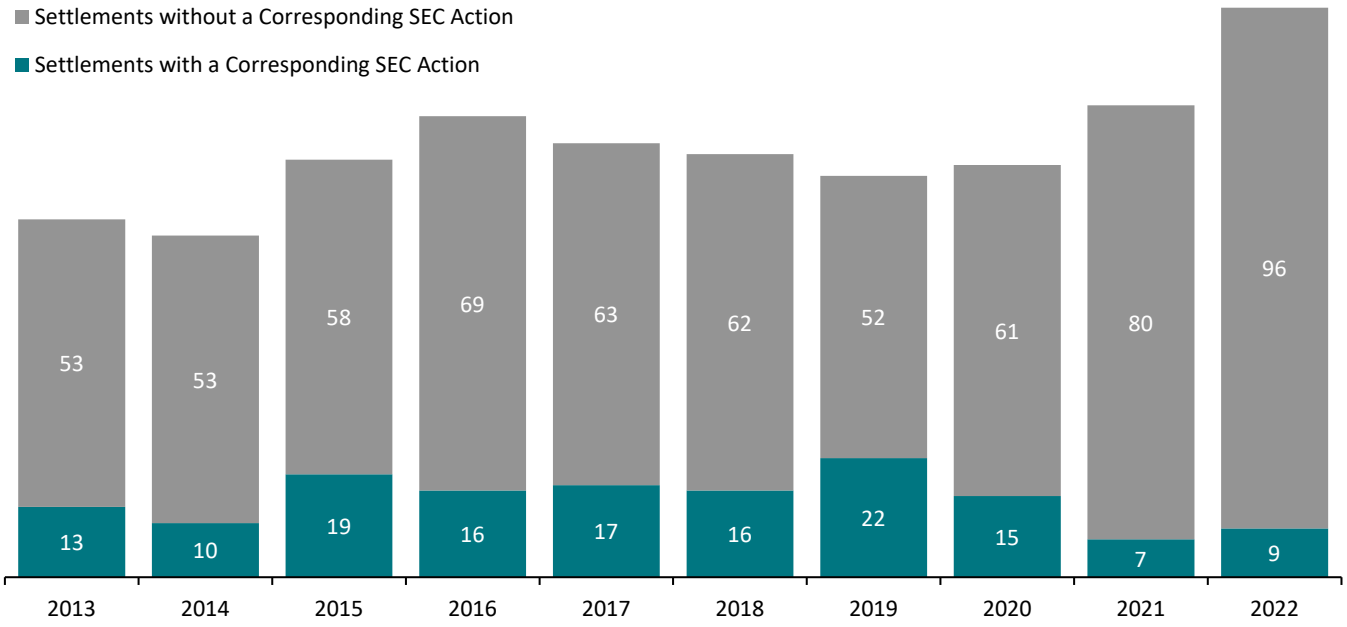
Corresponding SEC Actions

- Historically, cases with an accompanying SEC action have typically been associated with substantially higher settlement amounts.[13] However, this pattern did not hold in 2022.
- The median settlement amount in 2022 for cases that involved a corresponding SEC action was less than 5% higher than the median for cases without such an action. In contrast, in 2021, the median settlement amount for cases with an accompanying SEC action was more than double that for cases without such an action.

Settled cases involving SEC actions in 2022 were considerably smaller than cases without accompanying SEC actions.

- Both "simplified tiered damages" and DDL were lower in 2022 for cases with a corresponding SEC action when compared to those without, at 72% and 83% lower, respectively.
- Settled cases in 2022 with a corresponding SEC action were nearly 10% quicker to reach settlement, on average, compared to cases without such an action. In contrast, in 2021, cases with corresponding SEC actions took over 20% longer to reach a settlement than cases without corresponding SEC actions.
- The number of settled cases in 2022 involving either a corresponding SEC action or criminal charge remained below 13%, compared to an average of 24% for the years 2013–2021.

Figure 10: Frequency of SEC Actions
2013–2022



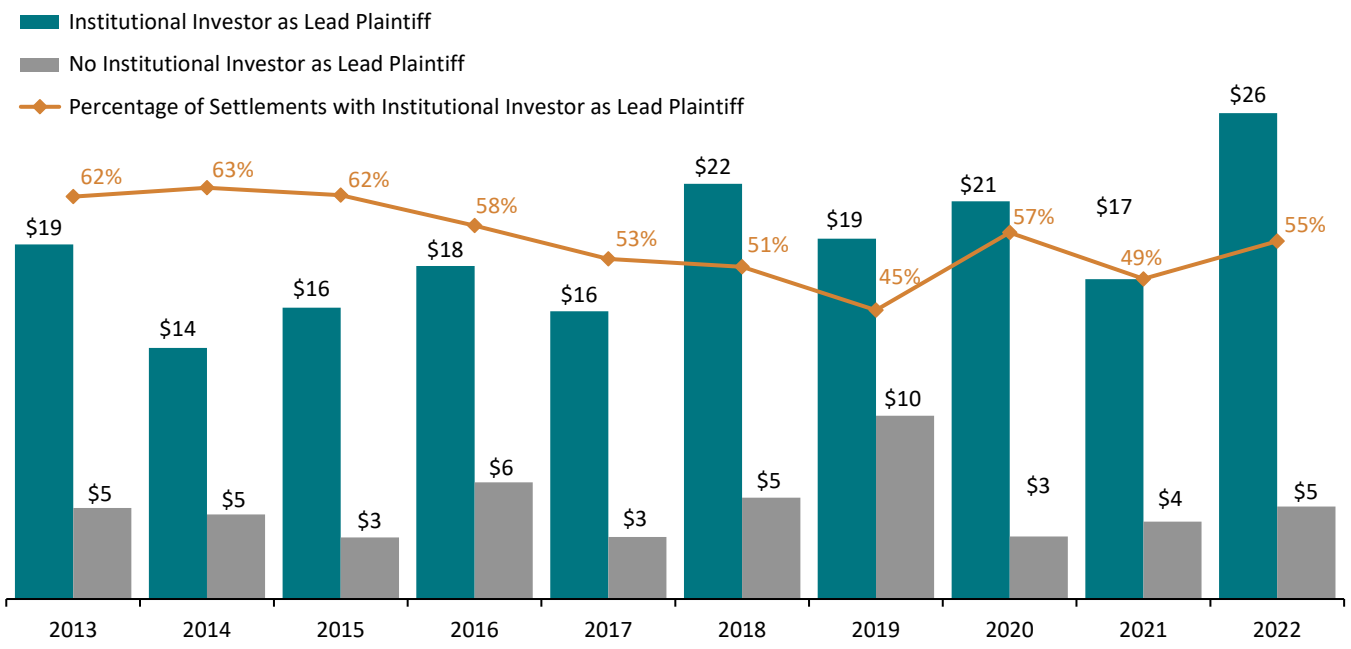
Institutional Investors

As discussed in prior reports, increasing institutional participation as lead plaintiffs in securities litigation was a focus of the Reform Act.[14] Indeed, in years following passage of the Reform Act, institutional investor involvement as lead plaintiffs did increase, particularly in larger cases, that is, cases with higher "simplified tiered damages."

- In 2022, for cases involving an institutional investor as lead plaintiff, median "simplified tiered damages" and median total assets were five times and eight times higher, respectively, than the median values for cases without an institutional investor as a lead plaintiff.
- Since passage of the Reform Act, public pension plans have been the most frequent type of institutional lead plaintiff.
- In 2022, a public pension plan served as lead plaintiff in two-thirds of cases with an institutional lead plaintiff. Moreover, in six of the seven mega settlement cases in 2022 involving an institutional lead plaintiff, the institutional investor was a public pension plan.
- Institutional participation as lead plaintiff continues to be associated with particular plaintiff counsel. For example, an institutional investor served as a lead plaintiff in 2022 in over 85% of settled cases in which Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossmann LLP served as lead plaintiff counsel. In contrast, institutional investors served as lead plaintiffs in 21% of cases in which The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP served as lead plaintiff counsel.

Of the eight mega settlement cases in 2022, seven included an institutional lead plaintiff.

Figure 11: Median Settlement Amounts and Institutional Investors
2013–2022
(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

Time to Settlement and Case Complexity

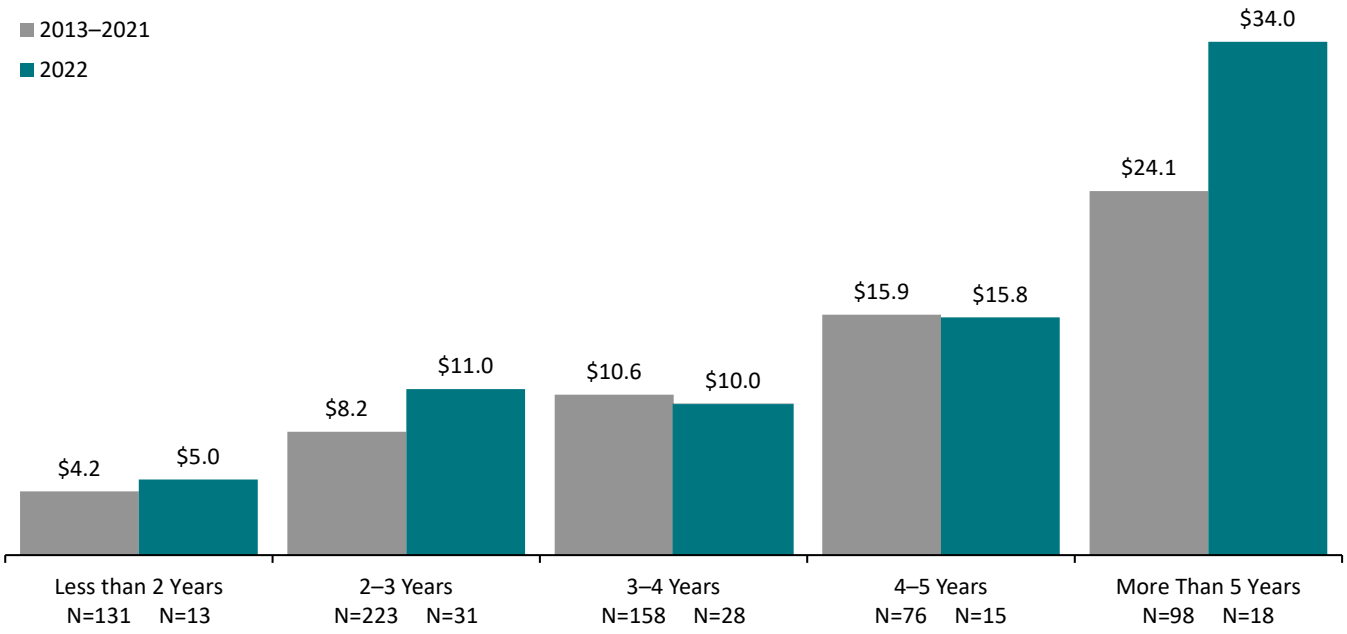
- Overall, the median time from filing to settlement hearing date in 2022 was longer—3.2 years for 2022 settlements, compared to 2.9 years for 2013–2021 settlements.
- Cases involving an institutional lead plaintiff continued to take longer to settle. In particular, settlements in 2022 with institutional lead plaintiffs took 33% longer to settle than cases not involving an institutional lead plaintiff.

Only 42% of cases in 2022 reached a settlement hearing date within three years of filing, the lowest percentage in the prior nine years.

- Larger cases (as measured by higher "simplified tiered damages") often take longer to resolve. Consistent with this, in 2022, the median time to settlement for cases that settled for at least $100 million was over 5.5 years—an all-time high for such cases.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date
2013–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. "N" refers to the number of cases.

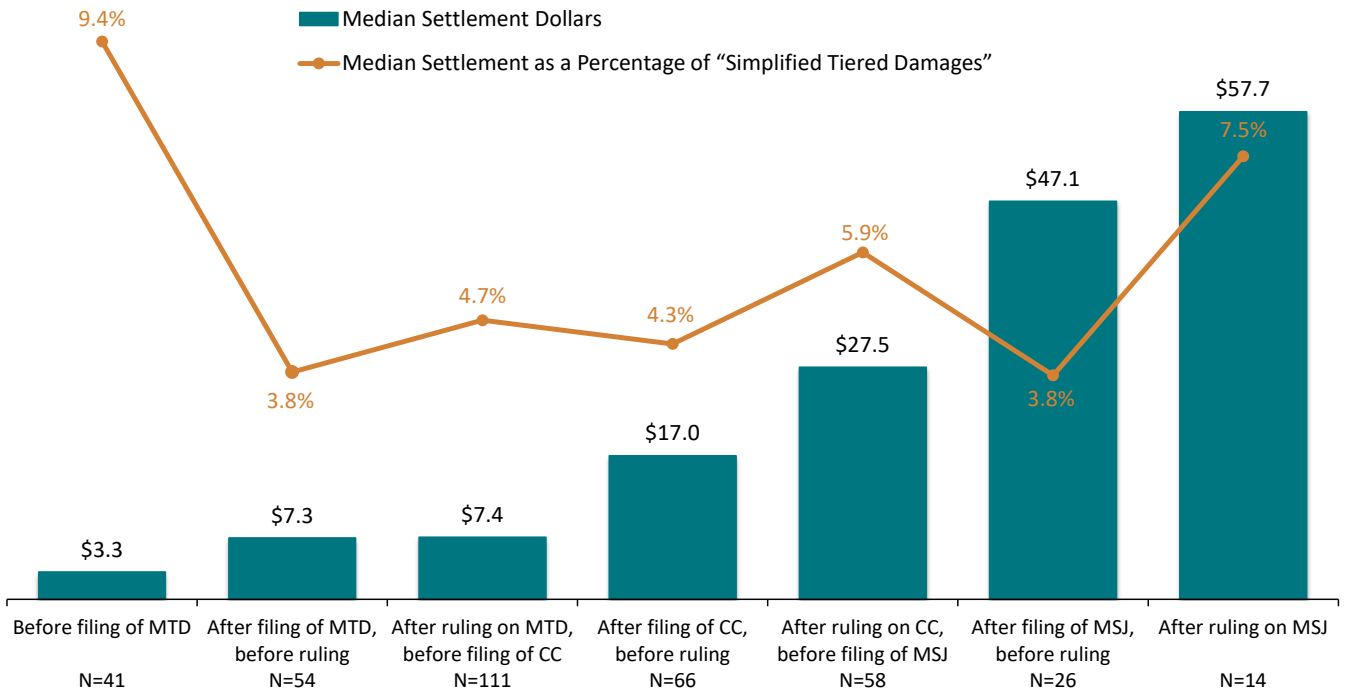
Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),[15] this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

- Cases settling at later stages continue to be larger in terms of total assets and "simplified tiered damages."
- In particular, the median issuer defendant total assets for 2022 cases that settled after the ruling on a motion for class certification was over four times the median for cases that settled prior to such a motion being ruled on.
- In 2022, cases where a motion for class certification was filed were nearly three times as likely to have either Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossmann LLP as lead plaintiff counsel than The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP.
- Cases settling at later stages often included an institutional investor lead plaintiff. For example, in 2022, an institutional investor served as lead plaintiff 69% of the time for cases that settled after the filing of a motion for class certification (slightly higher than the percentage over the prior four years), compared to 44% for cases that settled prior to the filing of a motion for class certification (38% in the prior four years)
- Overall, compared to settlements in 2021, a larger proportion of cases in 2022 did not reach settlement until after a motion for class certification was filed. In addition, 14% of 2022 settled cases were resolved after a summary judgment motion, compared to less than 9% for 2018–2021 settlements.

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement
2018–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. "N" refers to the number of cases. MTD refers to "motion to dismiss," CC refers to "class certification," and MSJ refers to "motion for summary judgment." This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Cornerstone Research's Settlement Analysis

This research applies regression analysis to examine the relations between settlement outcomes and certain securities case characteristics. Regression analysis is employed to better understand the factors that are important for estimating what cases might settle for, given the characteristics of a particular securities class action.

Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2022, important determinants of settlement amounts include the following:

- "Simplified tiered damages"
- Maximum Dollar Loss (MDL)—the dollar-value change in the defendant firm's market capitalization from its class period peak to the trading day immediately following the end of the class period.
- Most recently reported total assets of the issuer defendant firm
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether there were criminal charges against the issuer, other defendants, or related parties with similar allegations to those included in the underlying class action complaint
- Whether there was an accompanying derivative action
- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether an institution was a lead plaintiff
- Whether securities other than common stock/ADR/ADS, were included in the alleged class

Cornerstone Research analyses show that settlements were higher when "simplified tiered damages," MDL, issuer defendant asset size, or the number of docket entries was larger, or when Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, an institution involved as lead plaintiff, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 75% of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains only cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 2,116 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2022. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[16]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[17] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[18]

Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Stanford Securities Litigation Analytics (SSLA), Securities Class Action Clearinghouse (SCAC), and public press.

Endnotes

1 Reported dollar figures and corresponding comparisons are adjusted for inflation; 2022 dollar equivalent figures are analyzed.

2 "Simplified tiered damages" are calculated for cases that settled in 2006 or later, following the U.S. Supreme Court's 2005 landmark decision in *Dura Pharmaceuticals Inc. v. Broudo*, 544 U.S. 336. "Simplified tiered damages" is based on the stock-price drops on alleged corrective disclosure dates as described in the settlement plan of allocation.

3 Disclosure Dollar Loss or DDL is the dollar-value change in the defendant firm's market capitalization between the end of the class period and the trading day immediately following the end of the class period.

4 Accounting irregularities reflect those cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.

5 *Securities Class Action Filings—2022 Year in Review*, Cornerstone Research (2023).

6 The "simplified tiered damages" approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the "true value" of the stock during the alleged class period (or "value line"). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant's common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling may differ substantially from damages estimates developed in conjunction with case-specific economic analysis.

7 Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).

8 The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to "simplified tiered damages," the estimation of "simplified statutory damages" makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.

9 The two sub-categories of accounting issues analyzed in Figure 8 of this report are (1) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (2) accounting irregularities.

10 *Accounting Class Action Filings and Settlements—2022 Review and Analysis*, Cornerstone Research (2023), forthcoming in spring 2023.

11 To be considered an accompanying or parallel derivative action, the derivative action must have underlying allegations that are similar or related to the underlying allegations of the securities class action and either be active or settling at the same time as the securities class action.

12 *Parallel Derivative Action Settlement Outcomes*, Cornerstone Research (2022).

13 As noted previously, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.

14 See, for example, *Securities Class Action Settlements—2006 Review and Analysis*, Cornerstone Research (2007) and Michael A. Perino, "Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA's Lead Plaintiff Provision," St. John's Legal Studies Research Paper No. 12-0021 (2013).

15 Stanford Securities Litigation Analytics (SSLA) tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice. The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at https://sla.law.stanford.edu/.

16 Available on a subscription basis. For further details see https://www.issgovernance.com/securities-class-action-services/.

17 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.

18 This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in millions)

Year	*Average*	10th	25th	*Median*	75th	90th
2013	*$90.8*	$2.4	$3.8	*$8.2*	$27.9	$103.6
2014	*$22.5*	$2.1	$3.5	*$7.4*	$16.3	$61.8
2015	*$48.6*	$1.6	$2.7	*$8.0*	$20.1	$116.1
2016	*$86.1*	$2.3	$5.1	*$10.4*	$40.2	$178.0
2017	*$22.0*	$1.8	$3.1	*$6.3*	$18.2	$42.3
2018	*$75.6*	$1.8	$4.2	*$13.1*	$28.8	$57.3
2019	*$32.3*	$1.7	$6.4	*$12.6*	$22.9	$57.2
2020	*$62.3*	$1.6	$3.6	*$11.1*	$22.9	$60.3
2021	*$22.2*	$1.9	$3.4	*$8.9*	$19.3	$63.3
2022	*$36.2*	$2.0	$5.0	*$13.0*	$33.0	$71.8

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

Appendix 2: Settlements by Select Industry Sectors
2013–2022

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Financial	92	$14.8	$293.3	5.0%
Healthcare	20	$14.2	$189.4	6.4%
Pharmaceuticals	119	$7.6	$237.6	3.8%
Retail	50	$13.2	$294.2	4.8%
Technology	103	$9.3	$315.9	4.6%
Telecommunication	26	$10.5	$311.0	4.4%

Note: Settlement dollars and "simplified tiered damages" are adjusted for inflation; 2022 dollar equivalent figures are presented. "Simplified tiered damages" are calculated only for cases involving Rule 10b-5 claims (whether alone or in addition to other claims).

Appendices (continued)

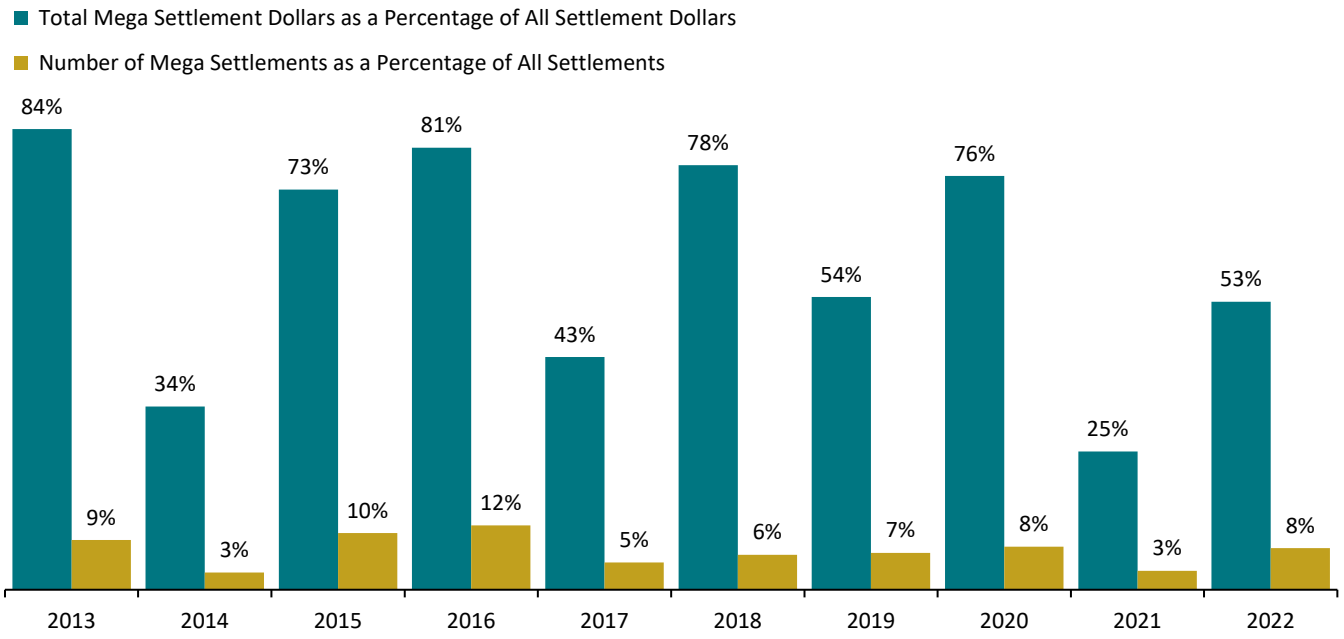
Appendix 3: Settlements by Federal Circuit Court
2013–2022

(Dollars in millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of "Simplified Tiered Damages"
First	21	$12.4	3.0%
Second	202	$9.0	5.0%
Third	81	$7.5	4.9%
Fourth	26	$22.9	3.8%
Fifth	38	$10.7	4.9%
Sixth	32	$13.5	7.4%
Seventh	37	$15.5	3.6%
Eighth	14	$46.4	5.1%
Ninth	191	$7.6	4.6%
Tenth	17	$10.2	5.8%
Eleventh	37	$11.9	4.9%
DC	5	$33.7	2.4%

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. Settlements as a percentage of "simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

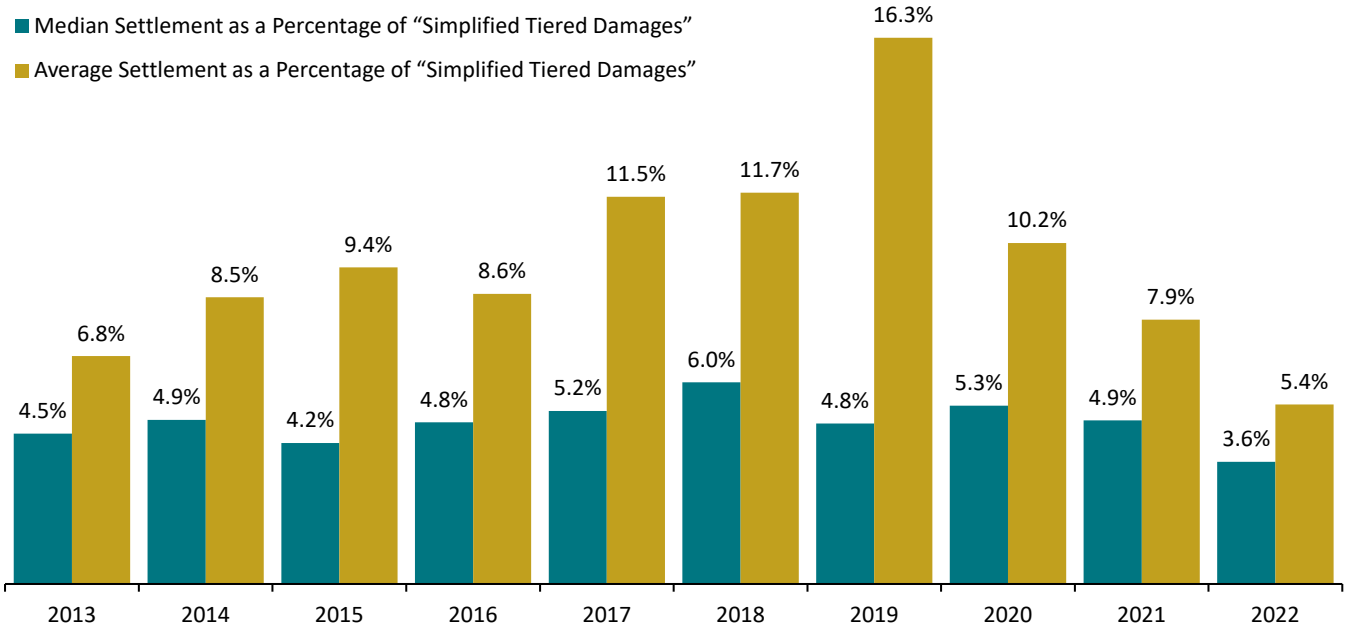
Appendix 4: Mega Settlements
2013–2022



Note: Mega settlements are defined as total settlement funds equal to or greater than $100 million.

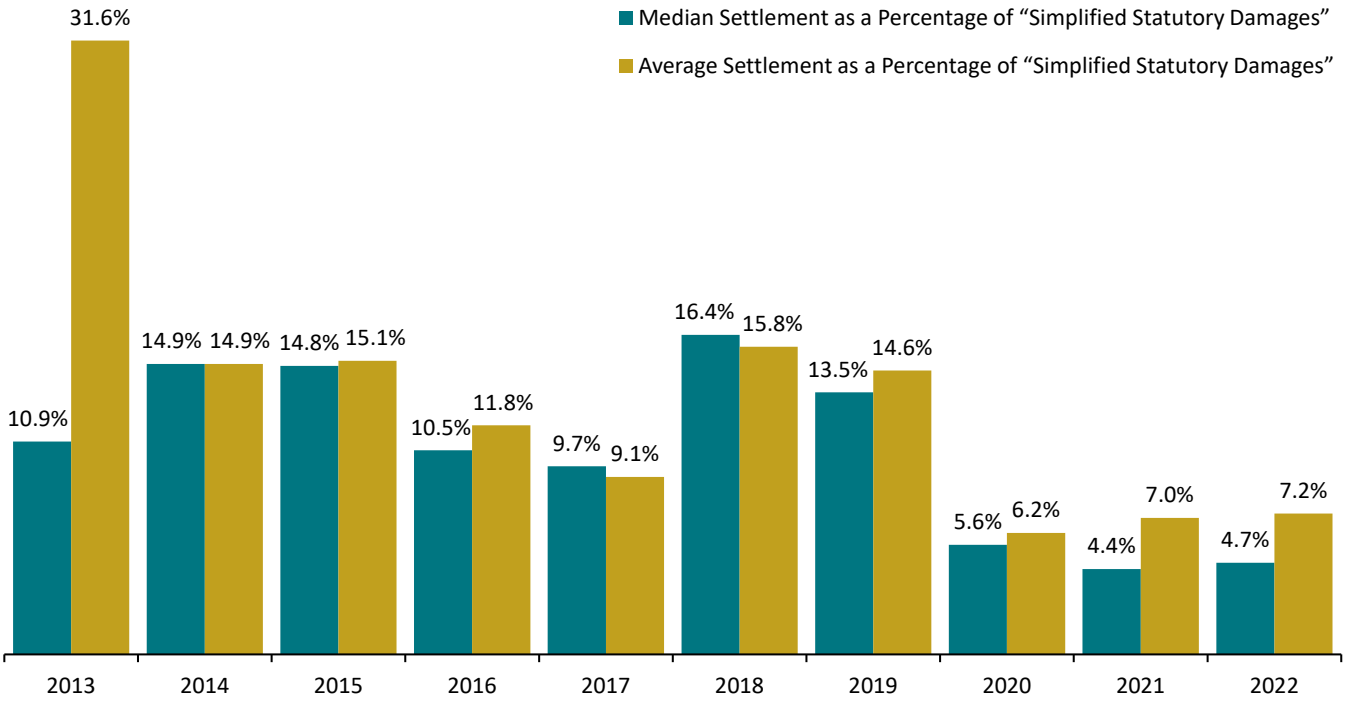
Appendices (continued)

Appendix 5: Median and Average Settlements as a Percentage of "Simplified Tiered Damages"
2013–2022



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 6: Median and Average Settlements as a Percentage of "Simplified Statutory Damages"
2013–2022

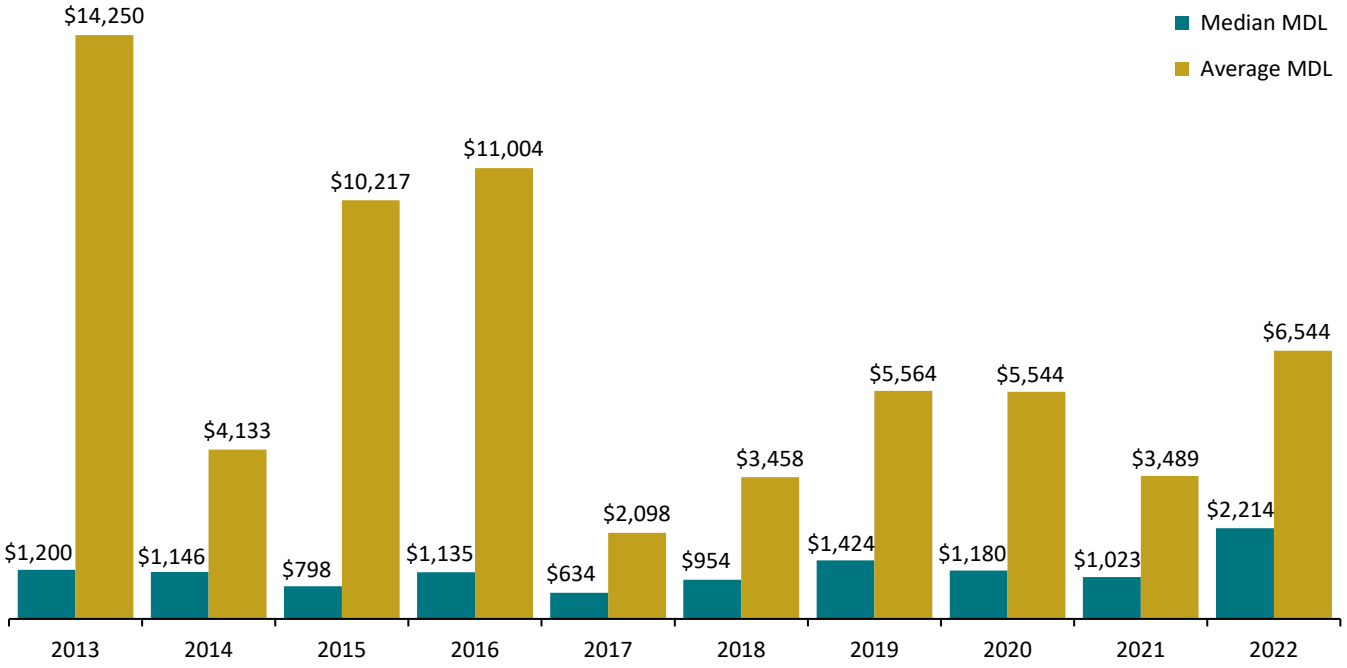


Note: "Simplified statutory damages" are calculated only for cases alleging Section 11 ('33 Act) claims and no Rule 10b-5 claims.

Appendices (continued)

Appendix 7: Median and Average Maximum Dollar Loss (MDL)
2013–2022

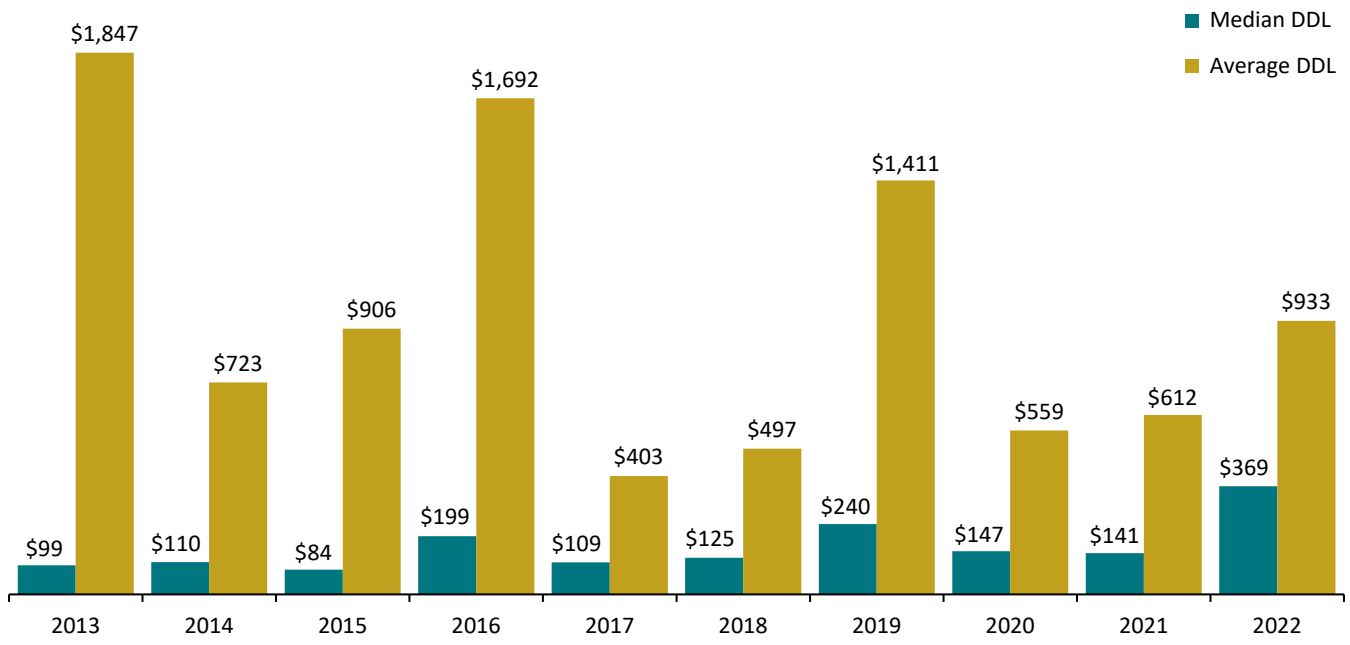
(Dollars in millions)



Note: MDL is adjusted for inflation based on class period end dates; 2022 dollar equivalents are presented. 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. This analysis excludes cases alleging '33 Act claims only.

Appendix 8: Median and Average Disclosure Dollar Loss (DDL)
2013–2022

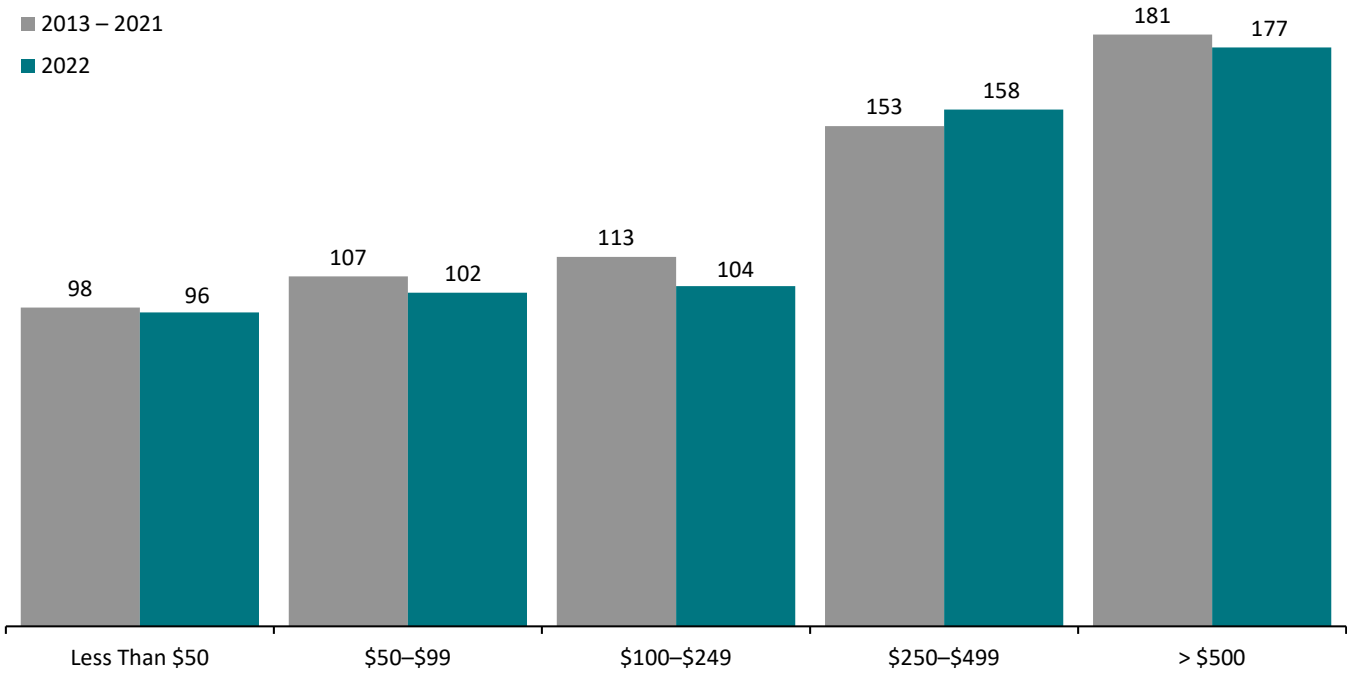
(Dollars in millions)



Note: DDL is adjusted for inflation based on class period end dates; 2022 dollar equivalents are presented. DDL is the dollar-value change in the defendant firm's market capitalization between the end of the class period and the trading day immediately following the end of the class period. This analysis excludes cases alleging '33 Act claims only.

Appendix 9: Median Docket Entries by "Simplified Tiered Damages" Range
2013–2022

(Dollars in millions)



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

About the Authors

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Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues, firm valuation, and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published notable academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

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Laura Simmons is a senior advisor with Cornerstone Research. She has more than 25 years of experience in economic consulting. Dr. Simmons has focused on damages and liability issues in securities class actions, as well as litigation involving the Employee Retirement Income Security Act (ERISA). She has also managed cases involving financial accounting, valuation, and corporate governance issues. She has served as a testifying expert in litigation involving accounting analyses, securities case damages, ERISA matters, and research on securities lawsuits.

Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, including research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors gratefully acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update. The views expressed herein do not necessarily represent the views of Cornerstone Research.

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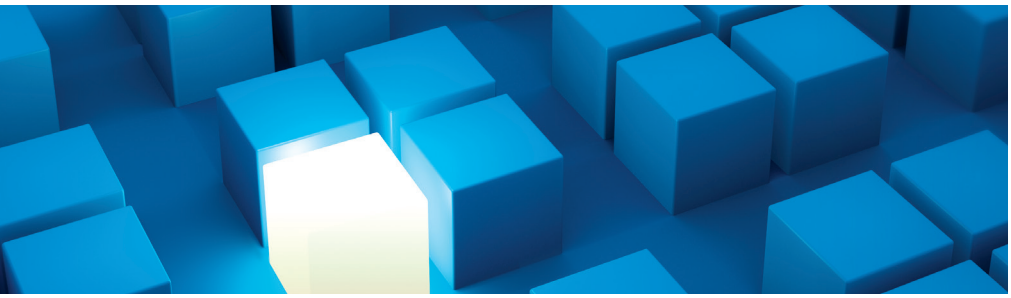

Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review

Federal Filings Declined for the Fourth Consecutive Year

Average and Median Settlement Values Increased by More than 50% Compared to 2021

By Janeen McIntosh, Svetlana Starykh, and Edward Flores

Insight in Economics™

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24 January 2023

Foreword

I am excited to share NERA's Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review with you. This year's edition builds on work carried out over more than three decades by many members of NERA's Securities and Finance Practice. This year's report continues our analyses of trends in filings and settlements and presents new analyses related to current topics such as event-driven litigation. Although space does not permit us to present all the analyses the authors have undertaken while working on this year's edition or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our research or our work related to securities litigations. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak, Managing Director

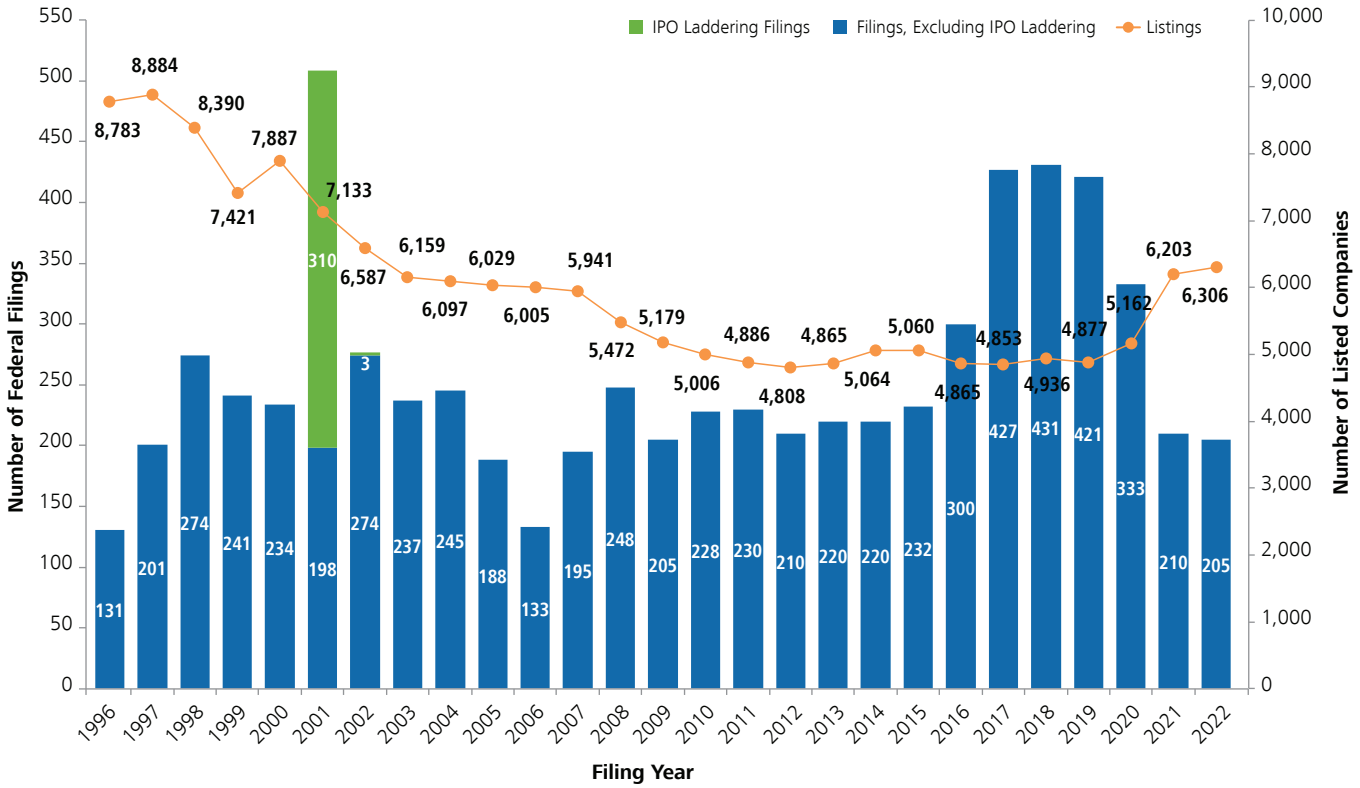
Introduction

Filings of new securities class actions declined each year from 2019 through 2022. In 2022, there were 205 new federal securities class action suits filed. This significant decline from the 431 cases filed in 2018 was largely due to the lower number of merger-objection and Rule 10b-5 cases filed in 2022. Similarly, there were fewer cases resolved in 2022 than in 2021. The decline in resolutions, since 2021, was driven by the decrease in dismissed non-merger-objection and non–crypto unregistered securities cases, a category that declined by more than 30%.[2] The aggregate settlement amount for cases settled in 2022 was $4 billion, which is approximately $2 billion higher than the inflation-adjusted amount for 2021. With more cases settling for higher values in 2022 compared to 2021, the average settlement value increased by over 70% to $38 million and the median settlement value increased by over 50% to $13 million.

Trends in Filings

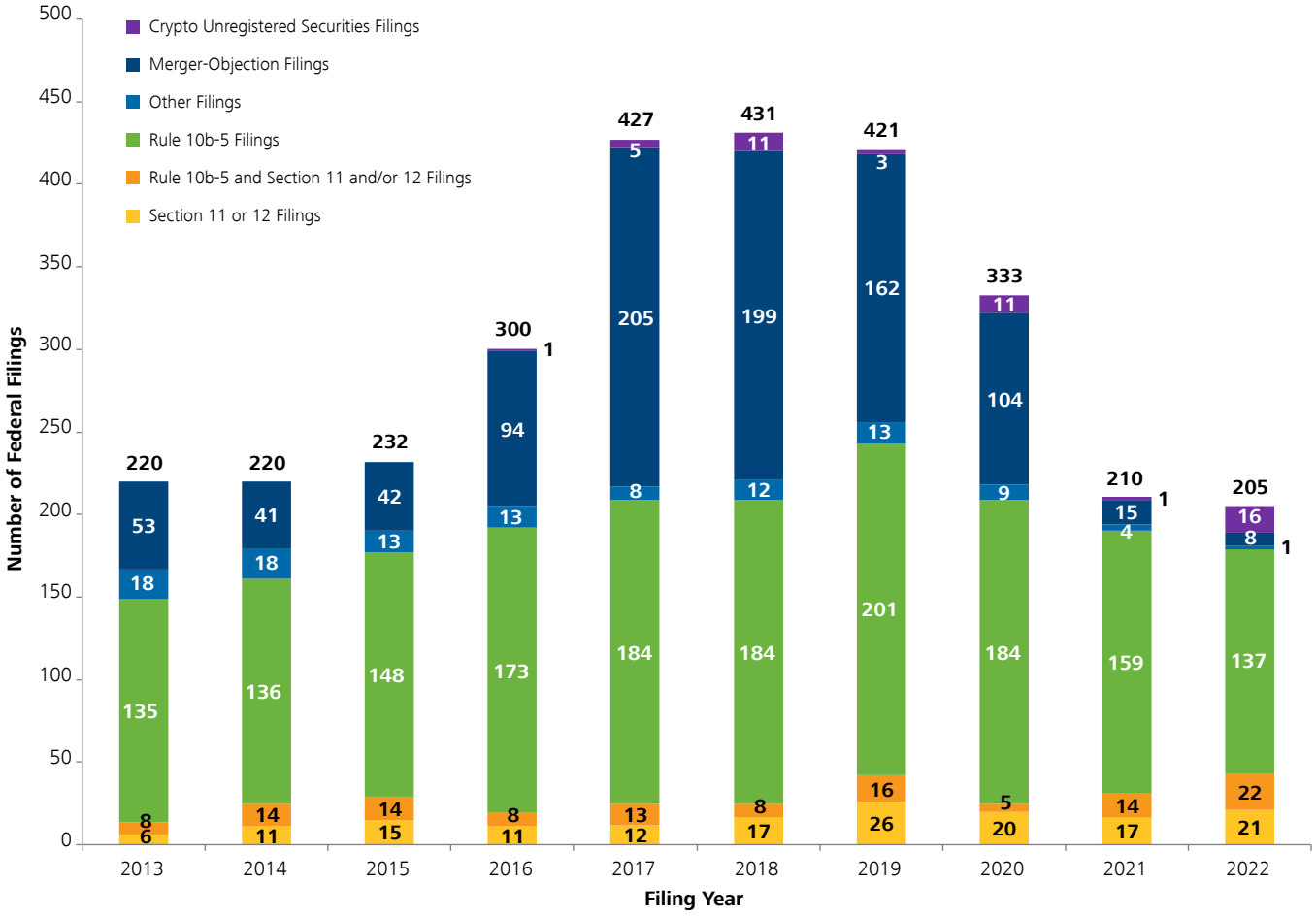
For the fourth consecutive year, there was a decline in the number of new federal securities class action suits filed (see Figure 1).[3] In 2022, there were 205 new cases filed, a decline from the 210 new cases filed in 2021. This decline is a continuation of the downward trend observed since 2018, when more than 400 cases were recorded. This decline has been driven by the lower levels of merger-objection cases and cases with only Rule 10b-5 claims filed in each year (see Figure 2). Of the cases filed in 2022, suits against defendants in the health technology and services sector and the electronic technology and services sector were the most common, each accounting for 27% of total cases (see Figure 3). Although there was a decline in the aggregate number of cases filed in the Second, Third, and Ninth Circuits to the lowest level within the 2018–2022 period, the majority of new filings continue to be concentrated in these jurisdictions (see Figure 4). Of the cases filed in 2022, 33% included an allegation related to misled future performance, the most common allegation for the year. The proportion of cases with an allegation related to a regulatory issue increased from 19% in 2021 to 26% in 2022 (see Figure 5).[4]

Figure 1. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2022



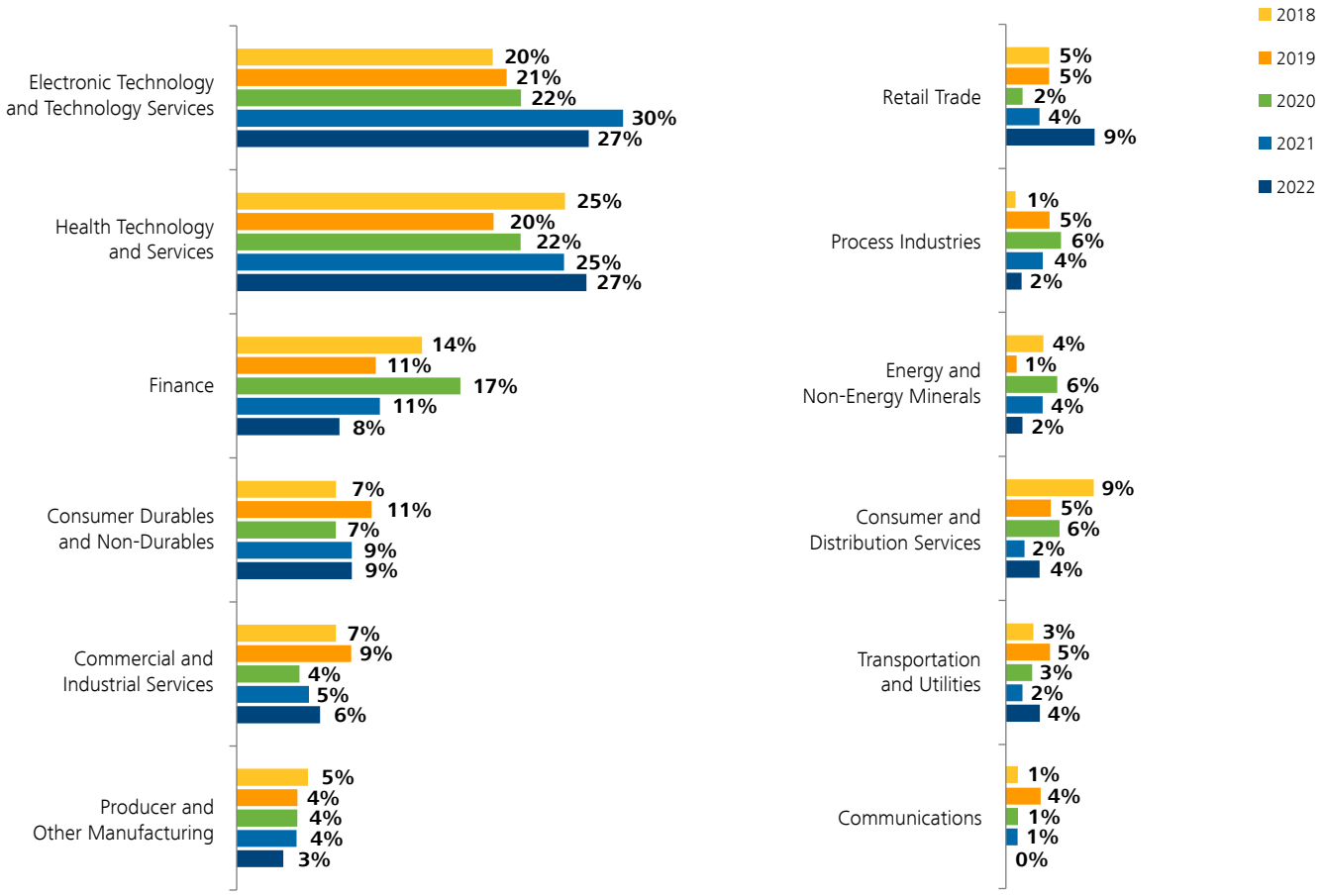
Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2022 listings data is as of November 2022.

Figure 2. **Federal Filings by Type**
January 2013–December 2022



For the fourth consecutive year, there was a decline in the number of new federal securities class action suits filed.

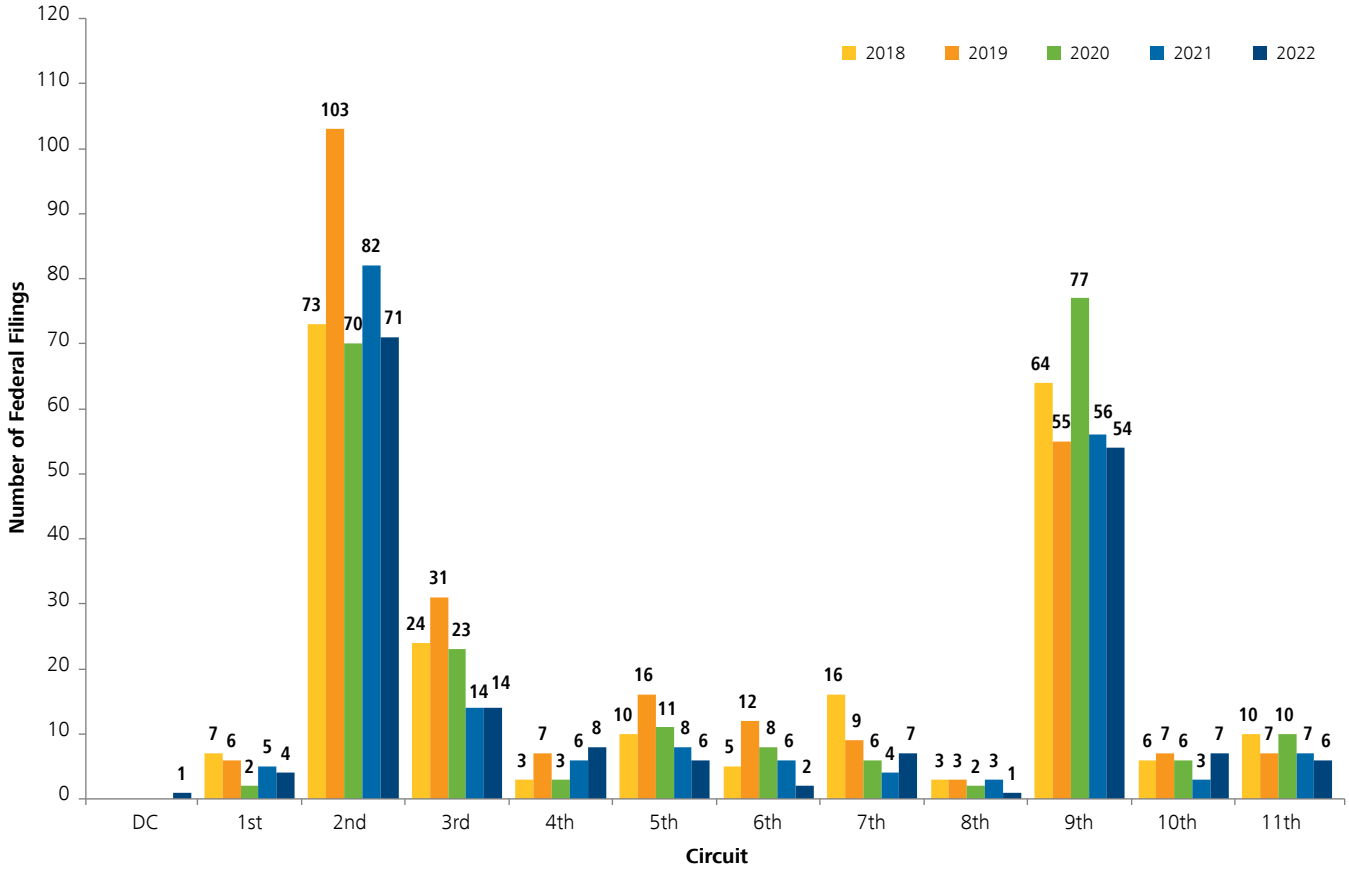
Figure 3. **Percentage of Federal Filings by Sector and Year**
Excludes Merger Objections and Crypto Unregistered Securities
January 2018–December 2022



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

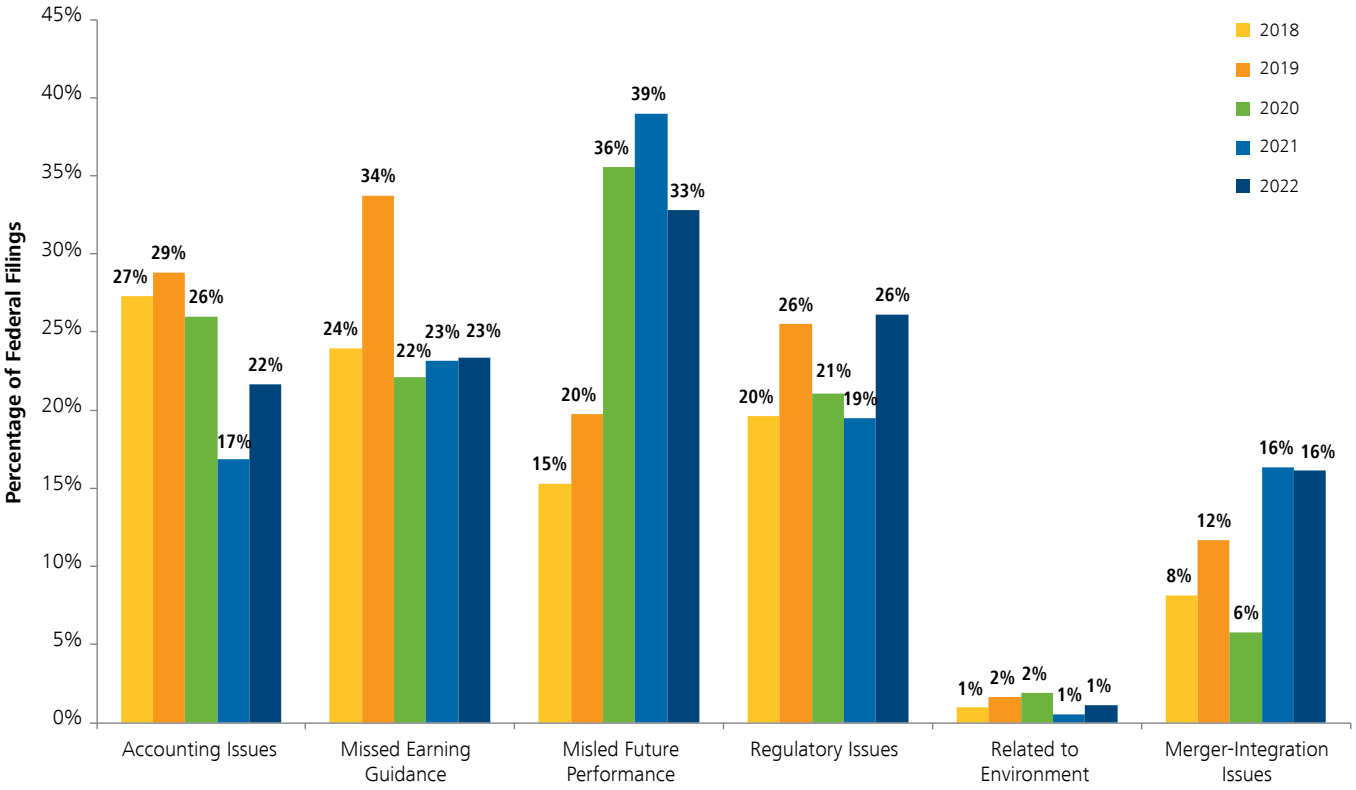
Filings against defendants in the health technology and services sector and the electronic technology and services sector were the most common in 2022, each accounting for 27% of total cases.

Figure 4. **Federal Filings by Circuit and Year**
Excludes Merger Objections and Crypto Unregistered Securities
January 2018–December 2022



Although there was a decline in the aggregate number of cases filed in the Second, Third, and Ninth Circuits to the lowest level within the 2018–2022 period, the majority of new filings continue to be concentrated in these jurisdictions.

Figure 5. **Allegations**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2018–December 2022



Event-Driven and Special Cases

Here we summarize activity and trends in filings over the 2019–2022 period in potential development areas we have identified for securities class actions (see Figures 6 and 7).[5]

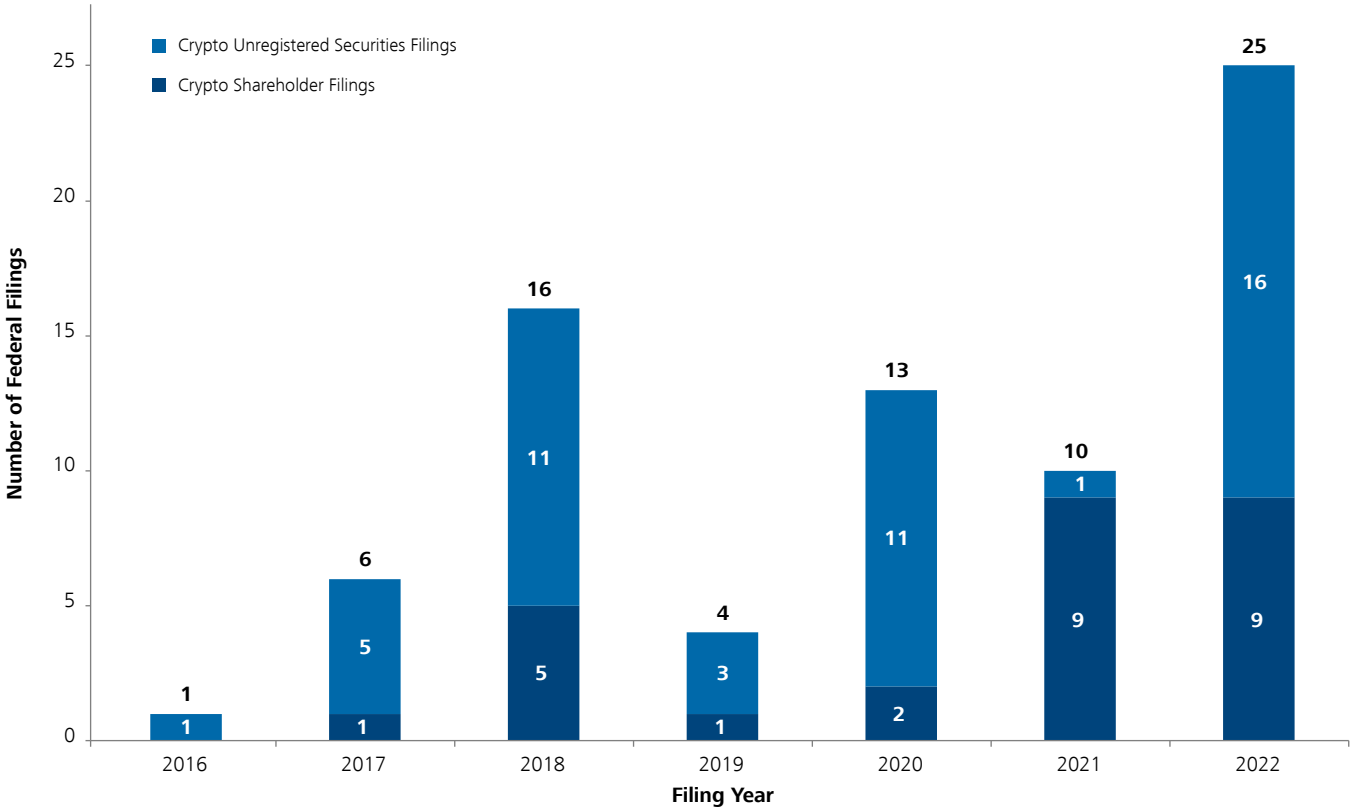
ESG Cases

Environmental, social, and governance (ESG) disclosures and companies' commitments to meet disclosure guidelines have been a developing area of interest to investors and government agencies such as the Securities and Exchange Commission over the recent decade.[6] Along with that interest have come waves of lawsuits filed by plaintiffs alleging fraud related to ESG disclosures. For example, in a securities class action suit filed against CBS Corporation in 2018, plaintiffs alleged the defendant made false and misleading statements and/or failed to disclose that CBS executives engaged in widespread workplace sexual harassment and that the defendant's purported policies were inadequate to prevent the conduct. This suit was settled in 2022 for $14,750,000. Similarly, in the ongoing securities suit filed against Activision Blizzard, Inc., in 2021, plaintiffs allege the defendant made false and misleading statements and/or failed to disclose that there was discrimination against women and minority employees and the existence of numerous complaints about unlawful harassment, discrimination, and retaliation made to human resources that were not addressed. As focus and interest in this area continues, this may lead to a higher number of ESG-related cases being filed.

Crypto Cases

The first securities class action related to cryptocurrency was filed against GAW Miners, LLC, in June 2016. Since 2017, there have been year-to-year fluctuations in the number of new crypto federal filings each year. In 2022, there were 25 crypto federal class actions suits filed. This is more than double the number of similar suits filed in 2021. This uptick was driven by the increase in the number of crypto unregistered securities cases.

Figure 6. **Number of Crypto Federal Filings**
January 2016–December 2022



Bribery/Kickbacks

Over the 2019–2020 period, there were 14 cases filed related to allegations of bribery or kickbacks. In 2021, there was a reduction in the number of these cases filed, with only one bribery/kickback-related case filed in that year. In 2022, four such cases were filed.

Cannabis

In 2019 and 2020, there were seven and six securities class action cases filed against defendants in the cannabis industry, respectively. Since then, there has only been one suit filed against these defendants each year.

Cybersecurity Breach

Since 2019, there have been at least three securities class action suits filed each year related to a cybersecurity breach. More specifically, between 2019 and 2020, there were a total of six such cases filed, and an additional five suits brought in 2021. In 2022, the number of new federal suits declined slightly to three filings.

COVID-19

Since the emergence of the COVID-19 pandemic in March 2020, 77 securities class action suits have been filed with claims related to the pandemic. Between March 2020 and December 2020, 33 cases were filed with COVID-19-related claims. In 2021, the number of suits filed declined to 20, but then increased slightly to 24 in 2022.

Environment

Over the 2019–2022 period, 12 environment-related securities class action suits have been filed. Of these, only three were filed in 2021–2022.

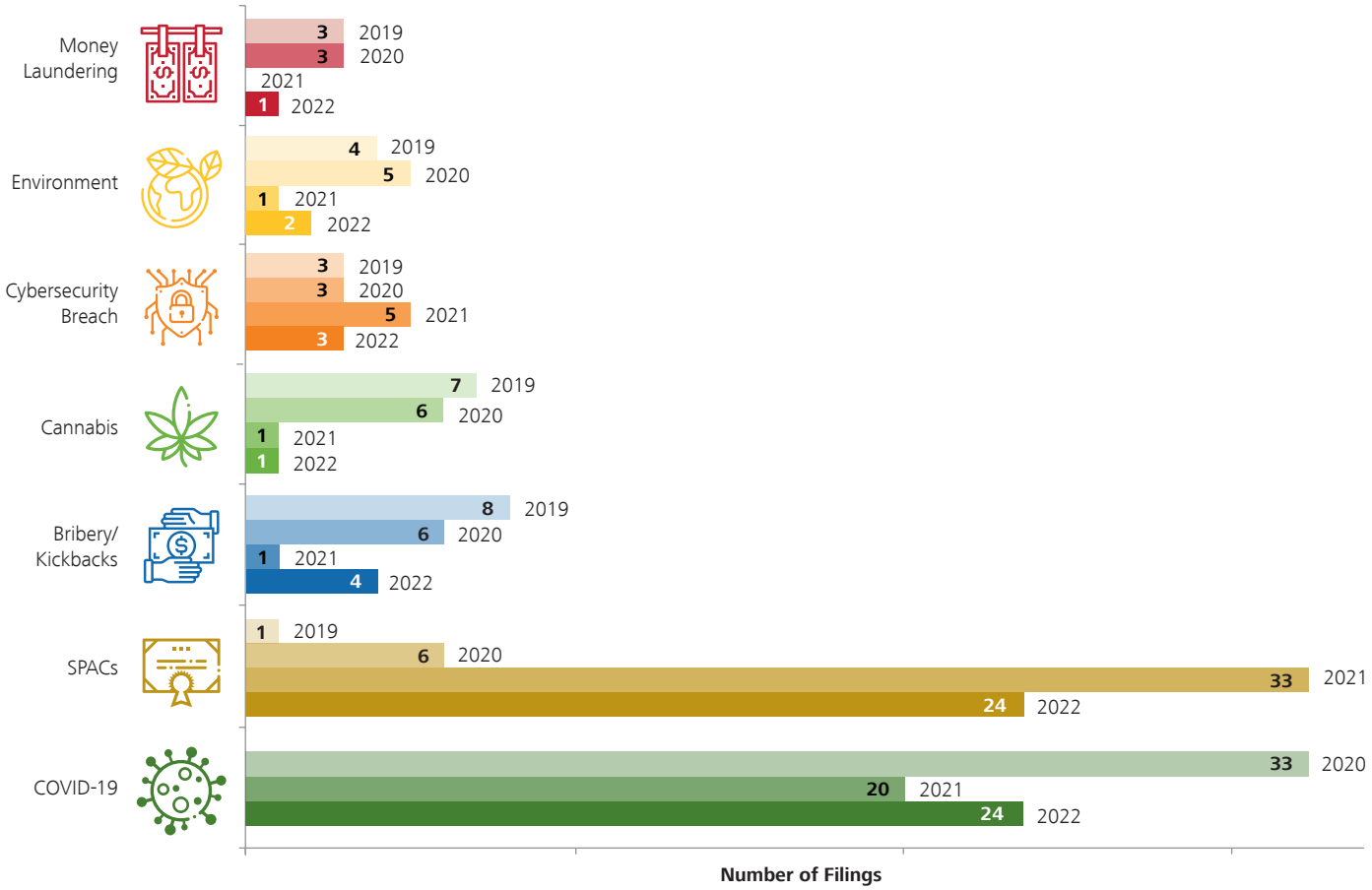
Money Laundering

In 2019 and 2020, there were three cases filed each year with claims related to money laundering. Between 2021 and 2022, only one such suit has been filed.

SPAC

In 2019, only one case related to special purpose acquisition companies (SPACs) was filed. Since then, new federal cases related to these claims have increased substantially, with six filings in 2020 and 33 cases filed in 2021. During 2022, there were 24 securities class action suits filed related to SPACs, a 27% decline from 2021.[7]

Figure 7. **Event-Driven and Other Special Cases by Filing Year**
January 2019–December 2022



Trends in Resolutions

The number of resolved cases—dismissed and settled cases—declined in 2022 to 214 from 248 in 2021 (see Figure 8).[8] Although 2022 was a record-setting year for the number of settled non-merger-objection, non–crypto unregistered securities cases during the 2013–2022 period, there was a larger decrease in the number of dismissed non-merger-objection, non–crypto unregistered securities cases, which led to a decline in overall resolutions. In addition, in 2022, the number of merger-objection cases resolved declined to 14, a substantial decrease from the 2017–2020 period, when more than 130 such cases were resolved each year. Of the cases filed since 2015, as of 31 December 2022, a larger portion has been dismissed than have settled (see Figure 9). This is consistent with historical trends, which indicate that settlements occur later in the litigation cycle and dismissals tend to occur in the earlier stages. Taking the time between first complaint and resolution to represent the length of time taken to resolve a suit, more than half the cases resolve between one and three years, and 17% of cases resolve more than four years after the first complaint was filed (see Figure 10).

Figure 8. **Number of Resolved Cases: Dismissed or Settled**
January 2013–December 2022

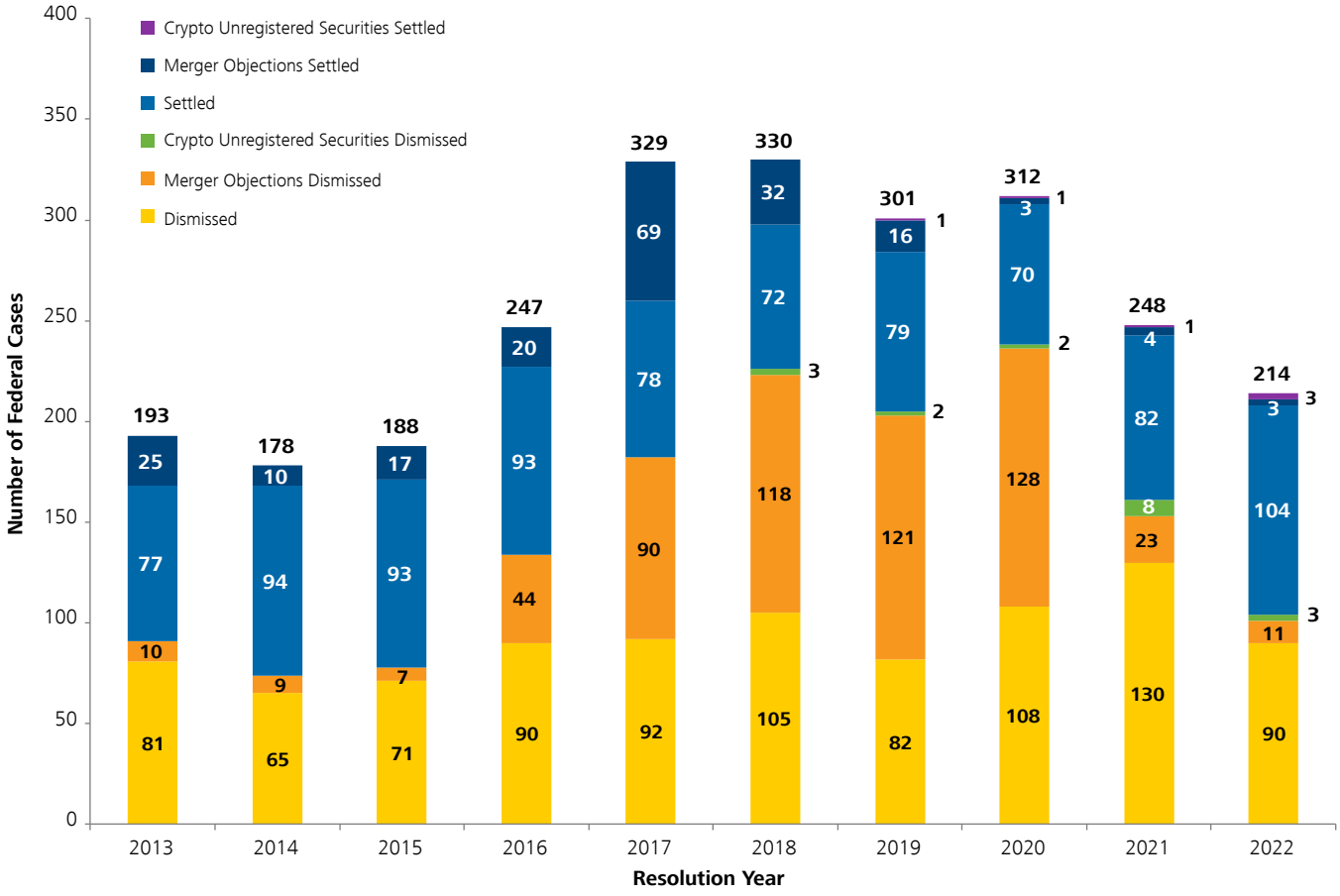
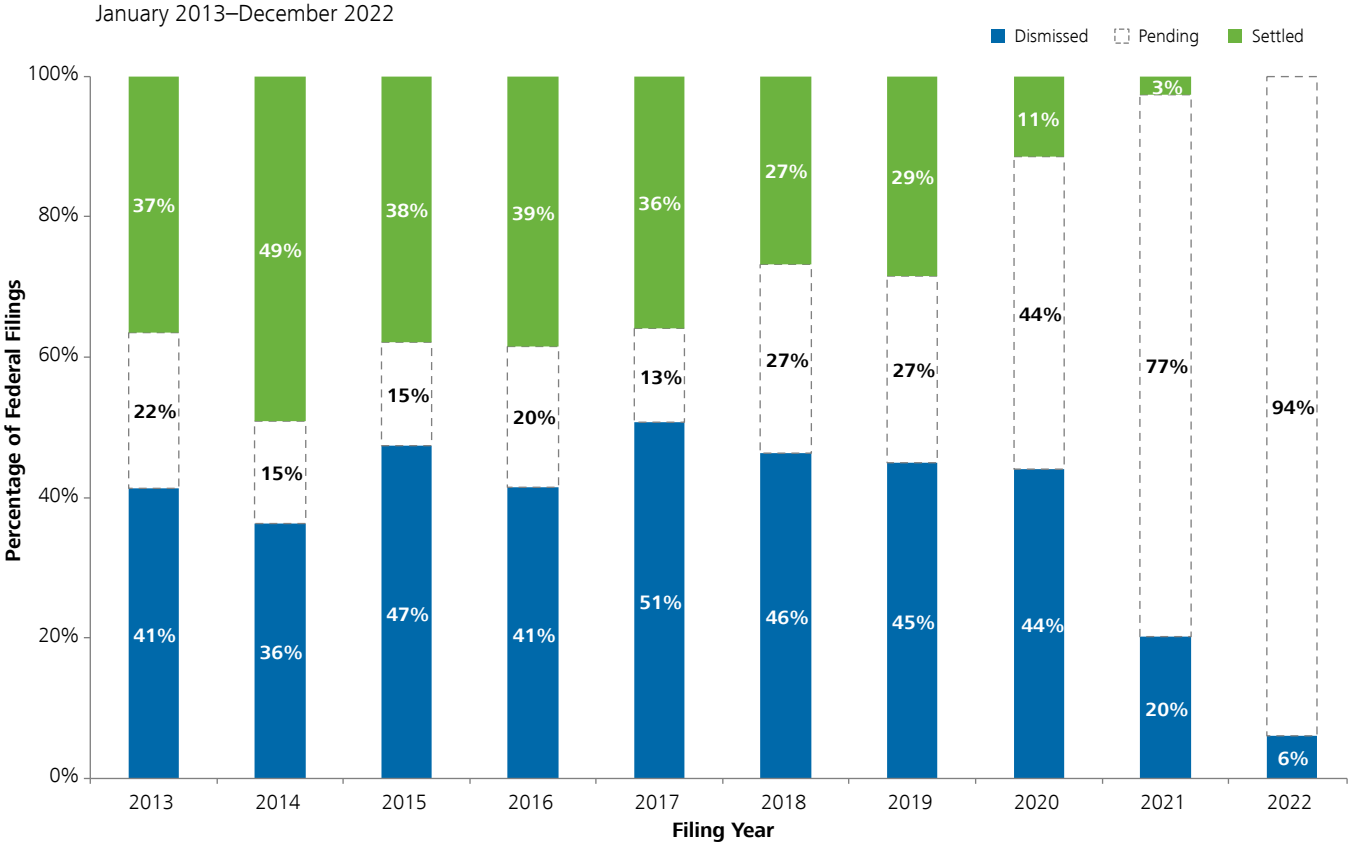
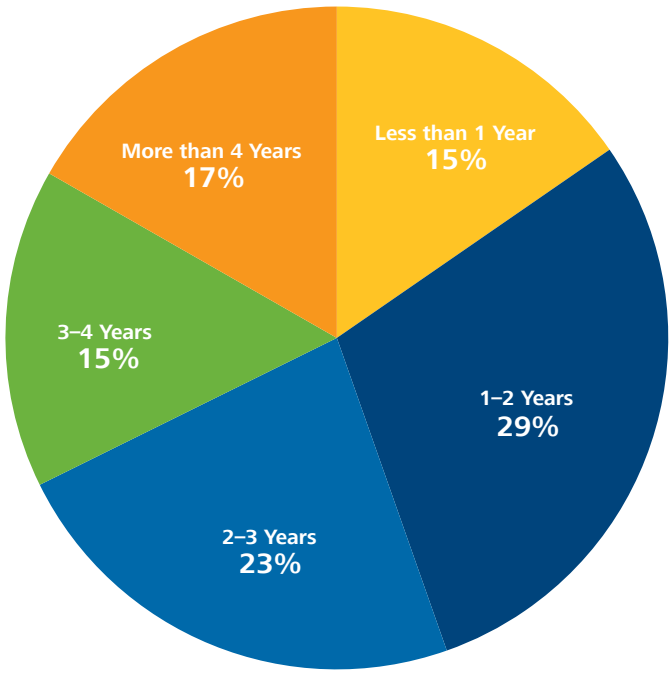


Figure 9. **Status of Cases as Percentage of Federal Filings by Filing Year**
Excludes Merger Objections, Crypto Unregistered Securities, and Verdicts
January 2013–December 2022



Note: Dismissals may include dismissals without prejudice and dismissals under appeal. Component values may not add to 100% due to rounding.

Figure 10. **Time from First Complaint Filing to Resolution**
Excluding Merger Objections and Crypto Unregistered Securities
Cases Filed January 2003–December 2018 and Resolved January 2003–December 2022



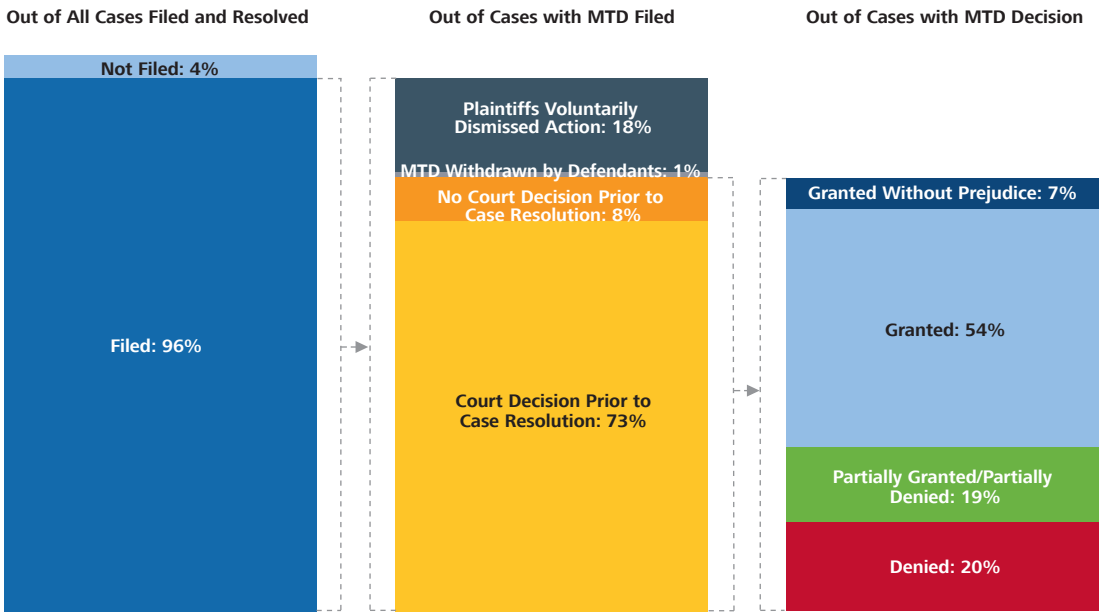
Analysis of Motions

NERA's federal securities class action database tracks filing and resolution activity as well as decisions on motions to dismiss, motions for class certification, and the status of any motion as of the resolution date. For this analysis, we include securities class actions that were filed and resolved over the 2013–2022 period in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, and/or Section 12 is alleged.

Motion to Dismiss

A motion to dismiss was filed in 96% of the securities class action suits filed and resolved. A decision was reached in 73% of these cases, while 18% were voluntarily dismissed by plaintiffs, 8% settled before a court decision was reached, and 1% of the motions were withdrawn by defendants. Among the cases where a decision was reached, 61% were granted (with or without prejudice) and only 20% were denied (see Figure 11).

Figure 11. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2013–December 2022



Motion for Class Certification

A motion for class certification was filed in only 17% of the securities class action suits filed and resolved, as most cases are either dismissed or settled before the class certification stage is reached. A decision was reached in 60% of the cases where a motion for class certification was filed. Almost all of the other 40% of cases were resolved with a settlement. Among the cases where a decision was reached, the motion for class certification was granted (with or without prejudice) in 86% of cases (see Figure 12). Approximately 65% of decisions on motions for class certification occur within three years of the filing of the first complaint, with nearly all decisions occurring within five years (see Figure 13). The median time was about 2.7 years.

Figure 12. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2013–December 2022

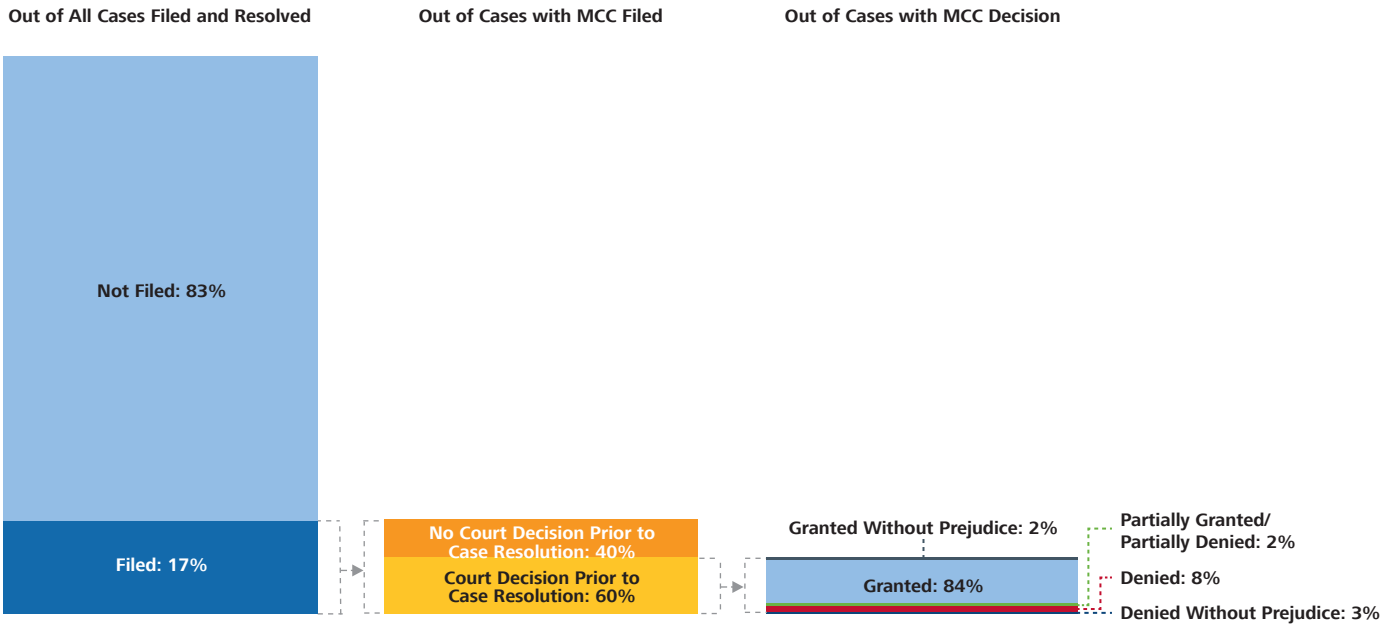
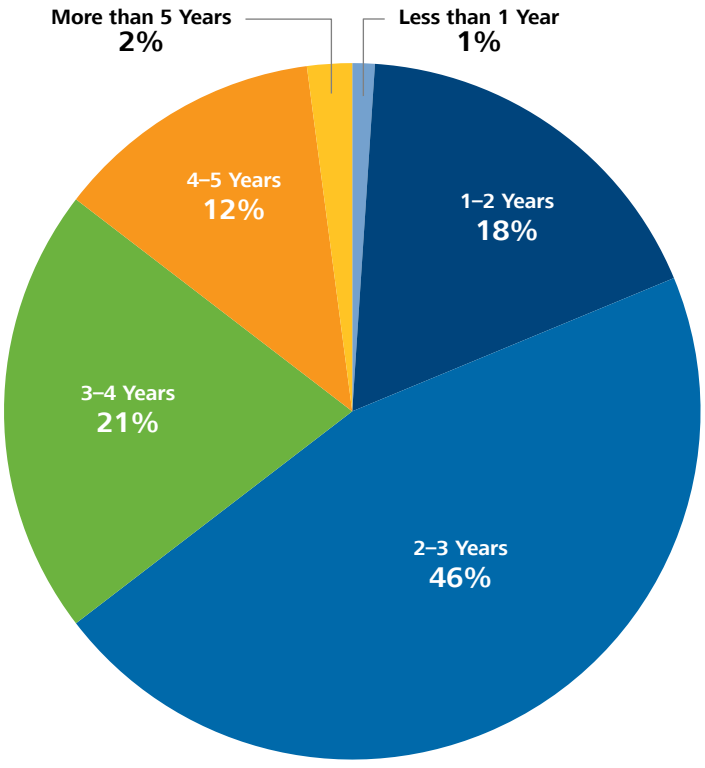


Figure 13. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2013–December 2022



Trends in Settlement Values

Aggregate settlements for 2022 totaled $4 billion, which is more than double the inflation-adjusted total for 2021 of $1.9 billion.[9] In 2022, the average settlement value was $38 million, an increase of more than 70% compared to the 2021 inflation-adjusted average settlement value (see Figures 14 and 15). The distribution of 2022 settlement values differed from the settlements in 2021, with more cases settling for higher values, and more consistent with the distribution of settlement values observed in 2020 (see Figure 16). This shift is also evident in the median settlement values. The median settlement value for 2022 is $13 million, which is approximately $5 million higher than the 2021 inflation-adjusted median value of $8 million (see Figure 17).[10]

Figure 14. **Average Settlement Value**
Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for $0 to the Class
January 2013–December 2022

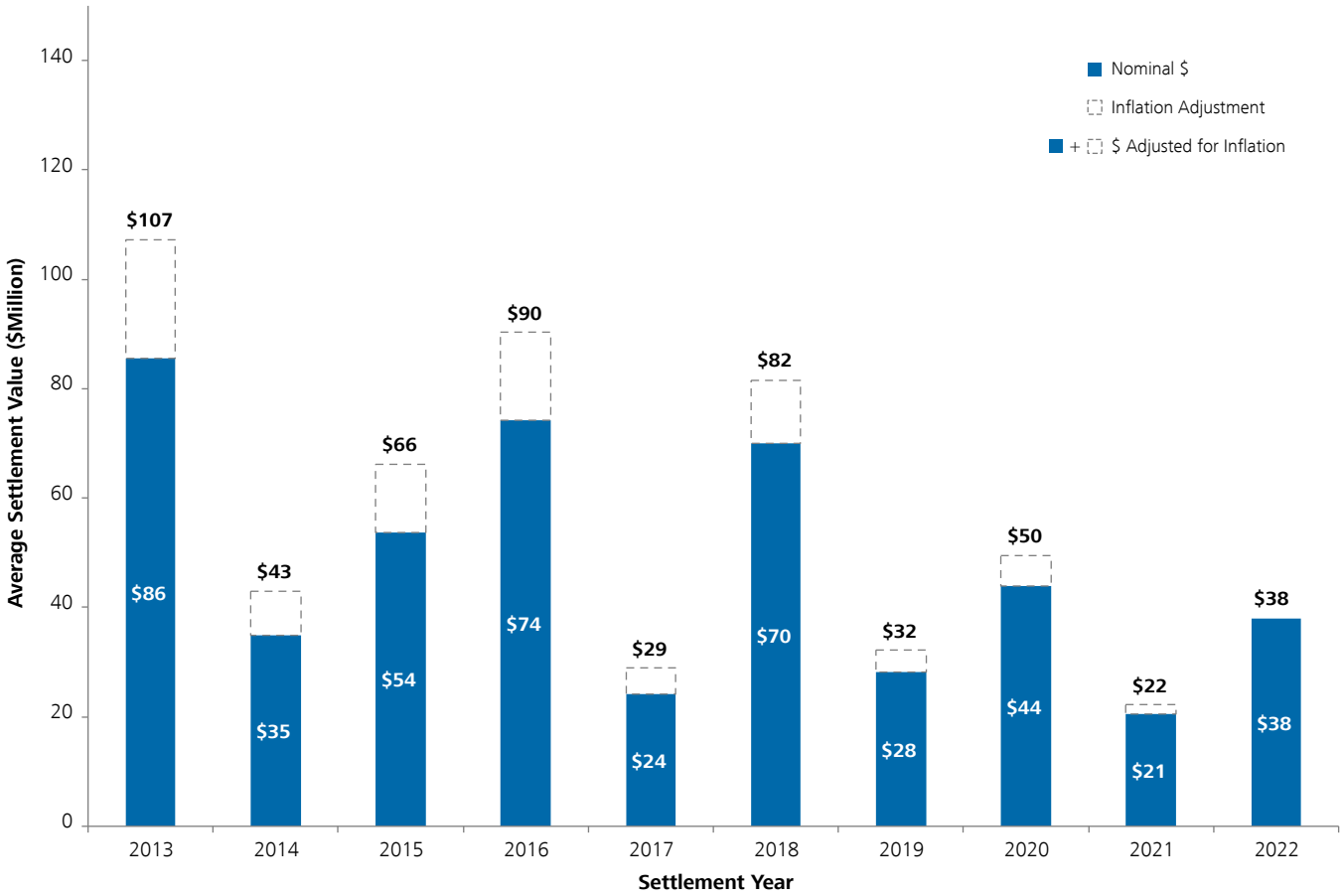


Figure 15. **Average Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, Crypto Unregistered Securities, and Settlements for $0 to the Class
January 2013–December 2022

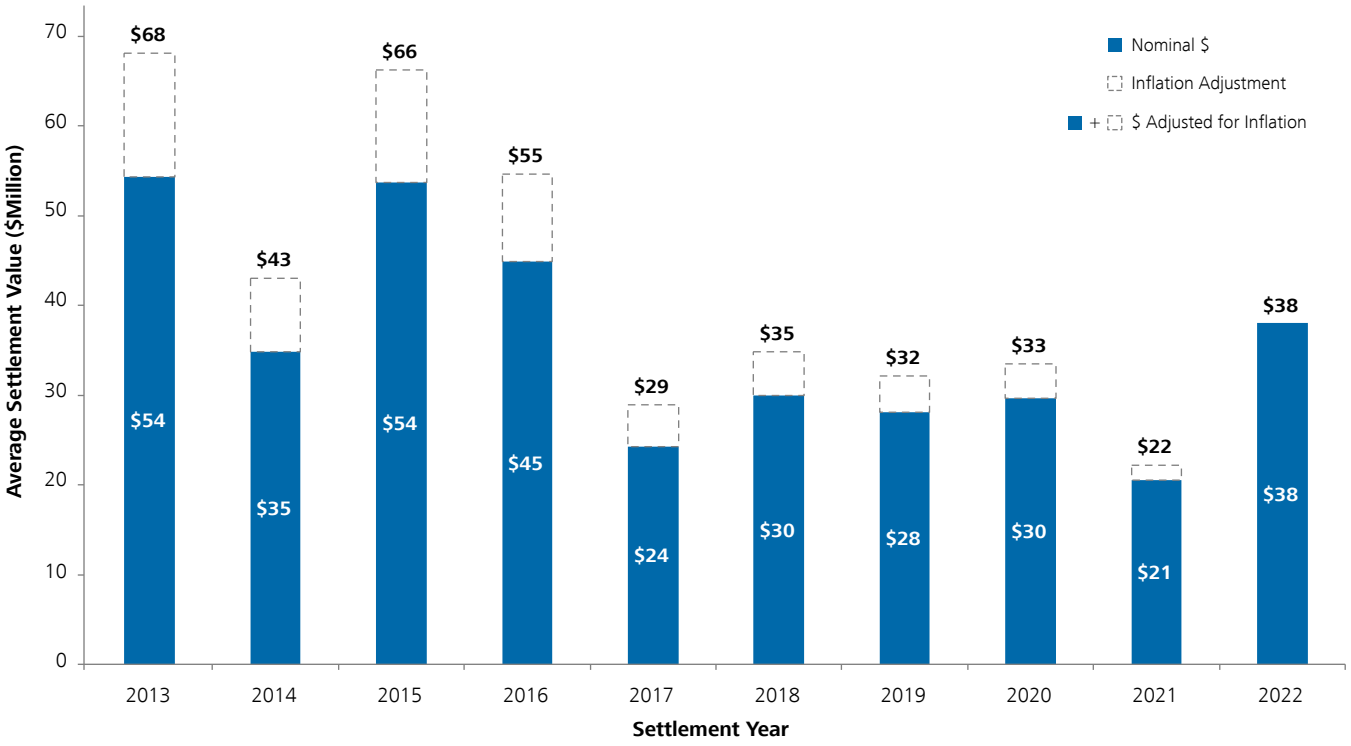


Figure 16. **Distribution of Settlement Values**
Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for $0 to the Class
January 2018–December 2022

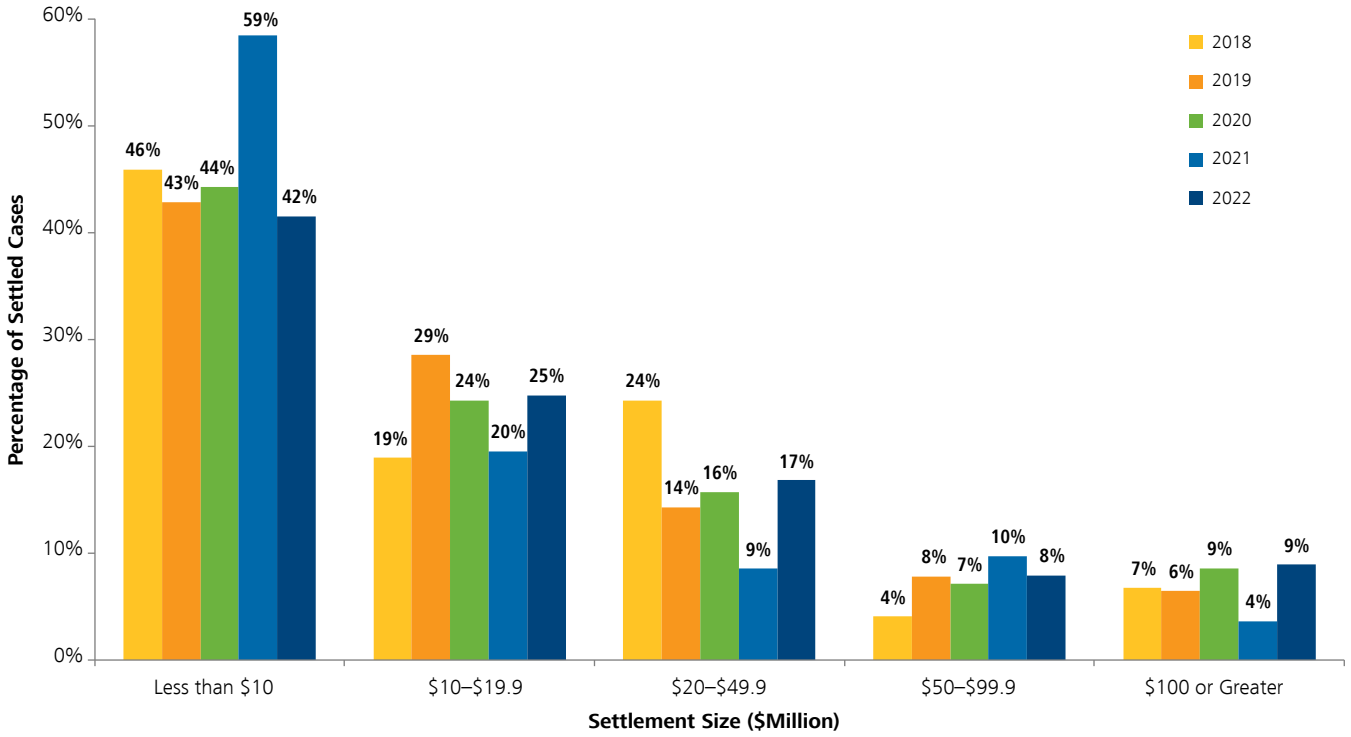
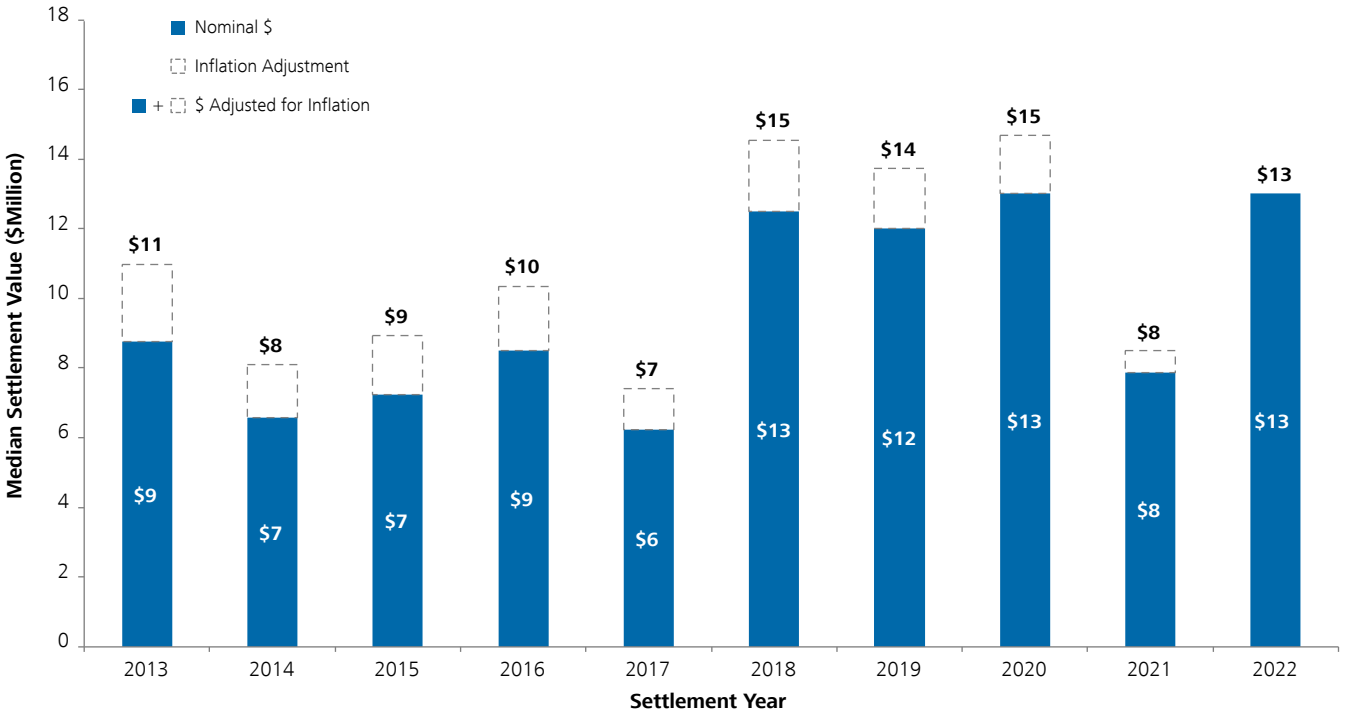


Figure 17. **Median Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, Crypto Unregistered Securities, and Settlements for $0 to the Class
January 2013–December 2022



Top Settlements

The top 10 settlements in 2022 ranged from $98 million to $809.5 million and totaled $2.2 billion. The highest settlement reached was against Twitter, Inc., for a case filed in California in 2016 (see Table 1).

Table 1. **Top 10 2022 Securities Class Action Settlements**

Ranking	Defendant	Filing Date	Settlement Date	Total Settlement Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses Value ($Million)	Circuit	Economic Sector
1	Twitter, Inc.	16 Sept 16	11 Nov 22	$809.5	$185.7	9th	Technology Services
2	Teva Pharmaceutical Industries Ltd.	6 Nov 16	2 Jun 22	$420.0	$109.3	2nd	Health Technology
3	Luckin Coffee Inc.	13 Feb 20	22 Jul 22	$175.0	$31.3	2nd	Consumer Non-Durables
4	BlackBerry Ltd.	4 Oct 13	29 Sept 22	$165.0	$59.5	2nd	Technology Services
5	Granite Construction Inc.	13 Aug 19	24 Feb 22	$129.0	$21.7	9th	Industrial Services
6	Endo International plc.	14 Nov 17	23 Feb 22	$113.4	$20.9	3rd	Health Technology
7	Walgreen Co.	10 April 15	7 Oct 22	$105.0	$31.1	7th	Retail Trade
8	Novo Nordisk A/S	11 Jan 17	27 Jun 22	$100.0	$31.7	3rd	Health Technology
9	Stamps.com, Inc.	13 Mar 19	24 Jan 22	$100.0	$17.3	9th	Commercial Services
10	Mattel, Inc.	24 Dec 19	2 May 22	$98.0	$14.8	9th	Consumer Durables
	Total			**$2,214.9**	**$523.4**		

The top 10 federal securities class action settlements, as of 31 December 2022, consists of settlements ranging from $1.14 billion to $7.24 billion. From 2018 to 2021, this list remained unchanged because there were no settlements reached in excess of $1.1 billion during this time. In 2022, this list was updated to incorporate the $1.21 billion partial settlement in the ongoing suit against Valeant Pharmaceuticals International, Inc. (see Table 2).

Table 2. **Top 10 Federal Securities Class Action Settlements** (As of 31 December 2022)

Ranking	Defendant	Filing Date	Settlement Year(s)	Total Settlement Value ($Million)	Codefendent Settlements		Plaintiffs' Attorneys' Fees and Expenses Value ($Million)	Circuit	Economic Sector
					Financial Institutions Value ($Million)	Accounting Firms Value ($Million)			
1	ENRON Corp.	22 Oct 01	2003–2010	$7,242	$6,903	$73	$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 02	2004–2005	$6,196	$6,004	$103	$530	2nd	Communications
3	Cendant Corp.	16 Apr 98	2000	$3,692	$342	$467	$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 02	2007	$3,200	No codefendant	$225	$493	1st	Producer Manufacturing
5	Petroleo Brasileiro S.A.- Petrobras	8 Dec 14	2018	$3,000	$0	$50	$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 Jul 02	2006	$2,650	No codefendant	$100	$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 09	2013	$2,425	No codefendant	No codefendant	$177	2nd	Finance
8	Household International, Inc.	19 Aug 02	2006–2016	$1,577	Dismissed	Dismissed	$427	7th	Finance
9	Valeant Pharmaceuticals International, Inc.*	22 Oct 15	2020	$1,210	$0	$0	$160	3rd	Health Technology
10	Nortel Networks	2 Mar 01	2006	$1,143	No codefendant	$0	$94	2nd	Electronic Technology
	Total			**$32,334**	**$13,249**	**$1,017**	**$3,358**		

*Denotes a partial settlement, which is included here due to its sizable amount. Note that this case is not included in any of our resolution or settlement statistics.

NERA-Defined Investor Losses

To estimate the potential aggregate loss to investors as a result of investing in the defendant's stock during the alleged class period, NERA has developed a proprietary variable, NERA-Defined Investor Losses, using publicly available data. The NERA-Defined Investor Loss measure is constructed assuming investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. Over the years, NERA has reviewed and examined more than 2,000 settlements and found, of the variables analyzed, this proprietary variable to be the most powerful predictor of settlement amount.[11]

A statistical review reveals that settlement values and NERA-Defined Investor Losses are highly correlated, although the relationship is not linear. The ratio is higher for cases with lower NERA-Defined Investor Losses than for cases with higher Investor Losses (see Figure 18). Since 2013, annual median Investor Losses have ranged from a high of $972 million to a low of $358 million. For cases settled in 2022, the median Investor Losses were $972 million, which is 33% higher than the 2021 value and the highest recorded value during the 2013–2022 period. Between 2020 and 2022, the median ratio of settlement amount to Investor Losses has been stable at 1.8% (see Figure 19).

Figure 18. **Median Settlement Value as a Percentage of NERA-Defined Investor Losses**
By Investor Losses
Cases Filed and Settled December 2011–December 2022

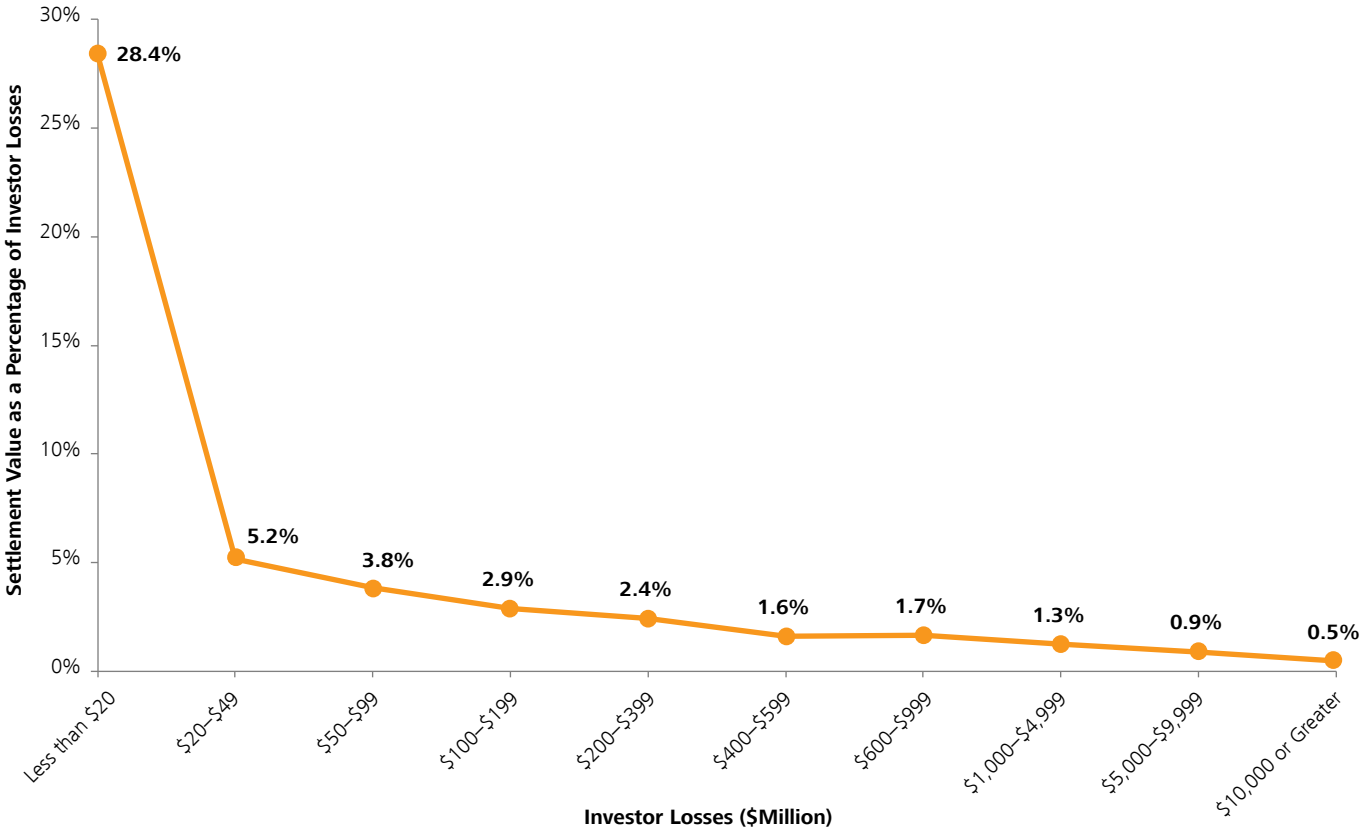
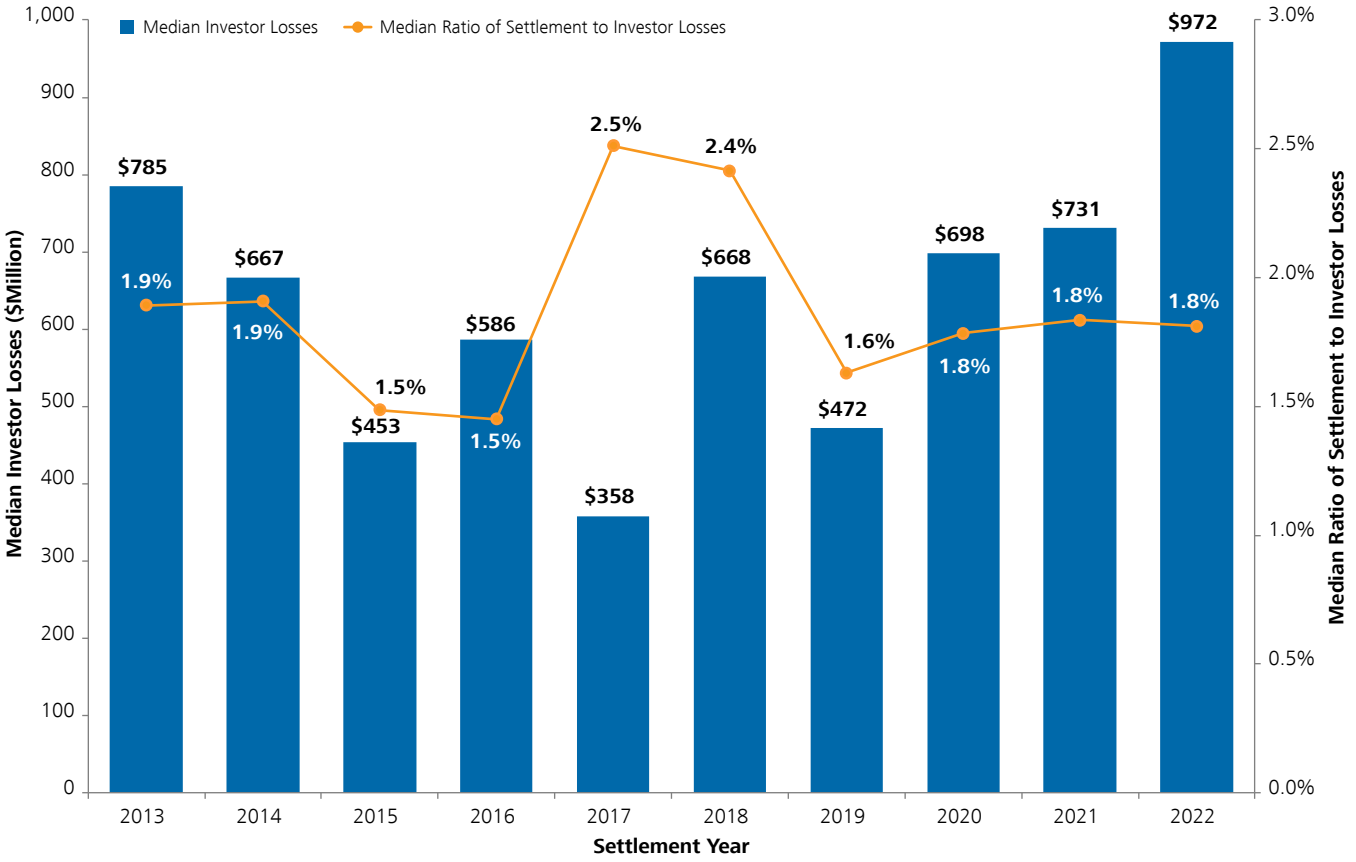


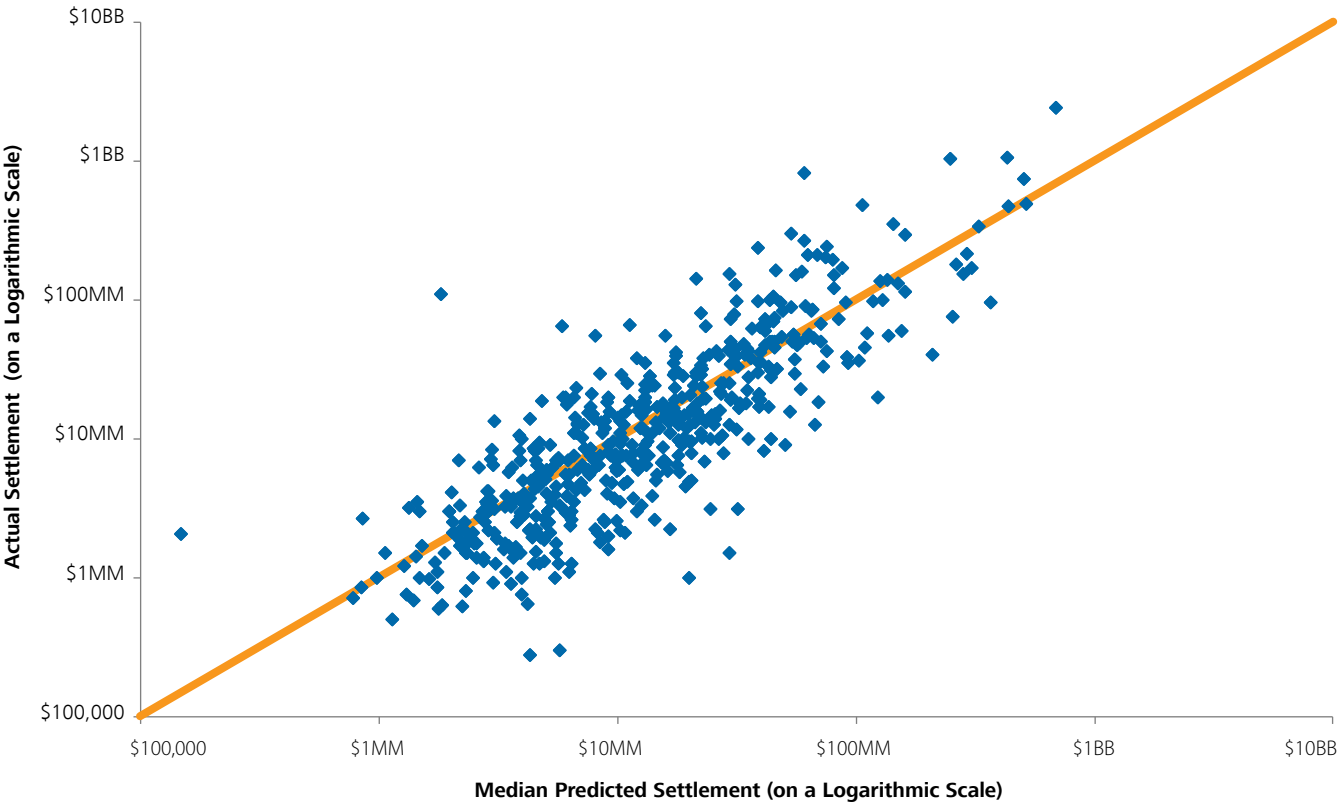
Figure 19. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2013–December 2022



NERA has identified the following key factors as driving settlement amounts:

- NERA-Defined Investor Losses;
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities (in addition to common stock) alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (e.g., whether the company has already been sanctioned by a government or regulatory agency or paid a fine in connection with the allegations);
- The stage of litigation at the time of settlement; and
- Whether an institution or public pension fund is named lead plaintiff (see Figure 20).

Figure 20. **Predicted vs. Actual Settlements**
Investor Losses Using S&P 500 Index
Cases Settled December 2011–December 2022



Among cases settled between December 2011 and December 2022, factors in NERA's statistical model account for a substantial fraction of the variation observed in actual settlements.

Trends in Plaintiffs' Attorneys' Fees and Expenses

In 2022, aggregate plaintiffs' attorneys' fees and expenses amounted to $1 billion (see Figure 21). This marks the first year since 2018 that aggregate plaintiffs' attorneys' fees and expenses exceeded $1 billion. The 2022 aggregate fees and expenses is double the amount observed in 2021, driven by an increase in the aggregate fees and expenses associated with settlements between $10 million and $499.9 million and by the $186 million in fees and expenses associated with settlements between $500 million and $999.9 million. Although there are year-to-year fluctuations in the aggregate fees and expenses, the trend in the median of plaintiffs' attorneys' fees and expenses as a percentage of settlement amount has remained stable (see Figure 22). The data reveal that fees and expenses represent an increasing percentage of settlement value as settlement value decreases—a pattern that is consistent in cases settled since 2013 as well as in cases settled between 1996 and 2012. For cases settled in the recent period with a settlement value of $1 billion or higher, fees and expenses accounted for 8.8% of the settlement value. This percentage increases to more than 30% for cases with a settlement value under $10 million.

Figure 21. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2013–December 2022

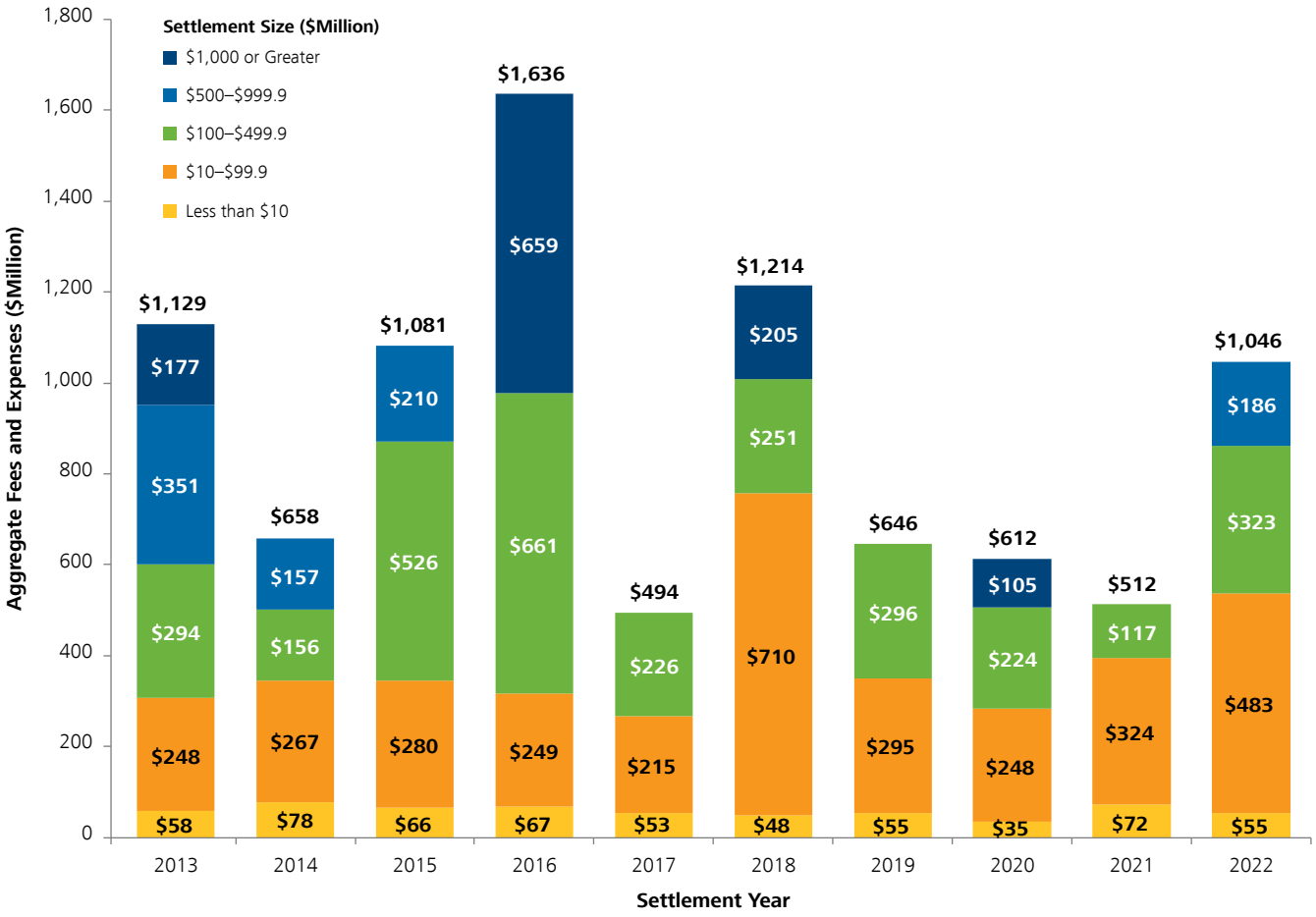
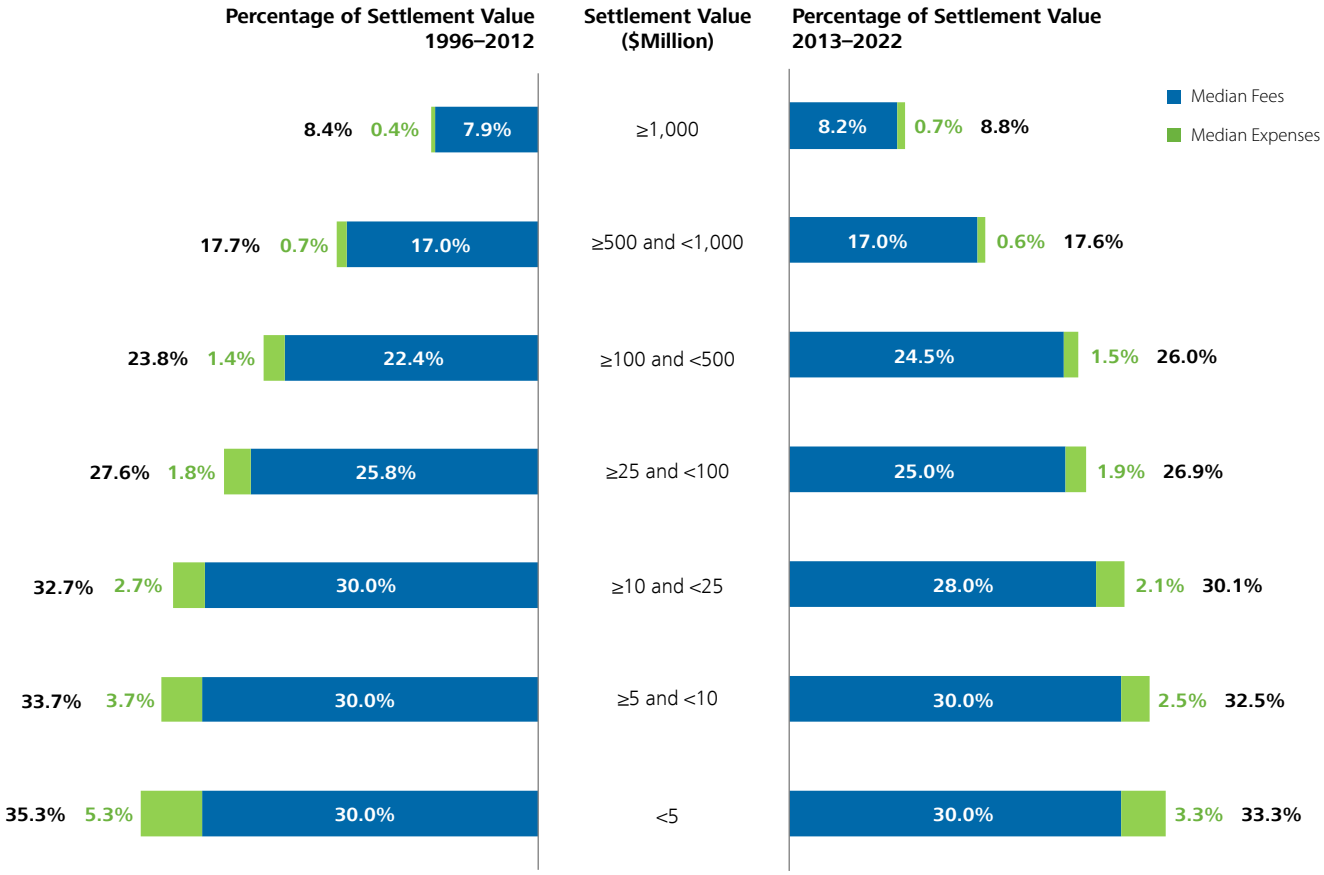


Figure 22. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for $0 to the Class



Note: Component values may not add to total value due to rounding.

Conclusion

In 2022, new filings of federal securities class actions declined for the fourth consecutive year as a result of fewer merger-objection and Rule 10b-5 cases filed. Of the 205 cases filed in 2022, more than 20% were SPAC or crypto-related filings. Total resolutions declined by 14% from 248 in 2021 to 214 in 2022 due to the continued reduction in non-merger-objection and non-crypto unregistered cases. The average settlement value and median settlement value for cases settled in 2022 were $38 million and $13 million, respectively, an increase over the 2021 values.

Notes

1 This edition of NERA's report on "Recent Trends in Securities Class Action Litigation" expands on previous work by our colleagues Lucy P. Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors thank Dr. David Tabak and Benjamin Seggerson for helpful comments on this edition. We thank Vlad Lee and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this report; any errors and omissions are those of the authors. NERA's proprietary securities class action database and all analyses reflected in this report are limited to federal case filings and resolutions.

2 In this study we introduced a new category of "special" cases, crypto cases, which consist of two mutually exclusive subgroups: (1) crypto shareholder class actions, which include a class of investors in common stock, American depositary receipts/ American depositary shares (ADR/ADS), and/or other registered securities, along with crypto- or digital-currency-related allegations; and (2) crypto unregistered securities class actions, which do not have class investors in any registered securities that are traded on major exchanges (New York Stock Exchange, Nasdaq). We include crypto shareholder class actions in all our analyses that include standard cases. Crypto unregistered securities class actions are excluded from some analyses, which is noted in the titles of our figures.

3 NERA tracks securities class actions that have been filed in federal courts. Most of these cases allege violations of federal securities laws; others allege violations of common law, including breach of fiduciary duty, as with some merger-objection cases; still others are filed in federal court under foreign or state law. If multiple 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. The first two actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect the consolidation. Therefore, case counts for a particular year may change over time. Different assumptions for consolidating filings would probably lead to counts that are similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings. Data for this report were collected from multiple sources, including Institutional Shareholder Services, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, complaints, case dockets, and public press reports.

4 Most securities class action complaints include multiple allegations. For this analysis, all allegations from the complaint are included and thus the total number of allegations exceeds the total number of filings.

5 It is important to note that due to the small number of cases in some of these categories, the findings summarized here may be driven by one or two cases.

6 ESG securities class action cases filed in federal courts are included in NERA's database and the analyses in this report. For this update, no analyses have been prepared on this development area specifically.

7 Report updated on 7 February 2023. Analyses for the "SPACs" group were updated to incorporate "blank check" company-related cases and cases that were not originally classified as SPACs prior to publishing.

8 Here "dismissed" is used as shorthand for all class actions resolved without settlement; it includes cases in which a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, cases terminated by a successful motion for summary judgment, or an ultimately unsuccessful motion for class certification.

9 While annual average settlement values can be a helpful statistic, these values may be affected by one or a few very high settlement amounts. Unlike averages, the median settlement value is unaffected by these very high outlier settlement amounts. To understand what more typical cases look like, we analyze the average and median settlement values for cases with a settlement amount under $1 billion, thus excluding these outlier settlement amounts. For the analysis of settlement values, we limit our data to non-merger-objection and non–crypto unregistered securities cases with settlements of more than $0 to the class.

10 For our analysis, NERA includes settlements that have had the first settlement-approval hearing. This means we do not include partial settlements or tentative settlements that have been announced by plaintiffs and/or defendants. As a result, although we include the Valeant partial settlement in Table 2 due to its sizable amount, this case is not included in any of our resolution or settlement statistics.

11 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock based on one or more corrective disclosures moving the stock price to its alleged true value. As a result, we have not calculated this metric for cases such as merger objections.

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For more than six decades, we have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real-world industry experience to issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. Continuing our legacy as the first international economic consultancy, NERA serves clients from major cities across North America, Europe, and Asia Pacific.

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