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Securities Class Action Settlement Totals Down 60 Percent in 2007, Finds Cornerstone Research

Number of Settlements with Estimated Damages above \$1 Billion Lowest since 2003, But Median Settlement Reaches Highest Level Ever at \$9 Million

Washington, DC, March 31, 2008 – A report released today by Cornerstone Research finds that the number of securities class action cases settled last year rose 21 percent, from 92 in 2006 to 111 in 2007. The total value of these settlements, however, plummeted 60 percent from the all-time high of \$17.2 billion reported in 2006 to \$7 billion in 2007. More than 70 percent of this drop was due to the largest settlement in history, the now \$7.2 billion Enron case settlement, the majority of which was approved in 2006.

Aggregate settlements in 2007 are dramatically influenced by the \$3.2 billion Tyco International settlement, which accounts for almost 45 percent of the total value of settlements approved in 2007, and is the third largest case settlement in history behind Enron and WorldCom (\$6.2 billion). Tyco was the only settlement approved in 2007 to exceed \$1 billion (compared with four in 2006, excluding Enron) and is only the seventh settlement in history above \$1 billion.

Overall, the number of settlements in excess of \$100 million declined from fourteen in 2006 to only nine in 2007. In sharp contrast to the decrease in settlements in excess of \$100 million, middle range settlements—those of \$10–20 million—increased in 2007. In 2006 such settlements accounted for just over 10 percent of the total; in 2007 they accounted for nearly 25 percent. In addition, in 2007 settlements for less than \$5 million declined to about 35 percent of the total. As a result, the median settlement spiked to \$9 million—the highest amount to date. (The median represents the point at which half the data points are greater and half are smaller; the midpoint.)

“For the past several years a relatively small number of settlements in excess of \$100 million have been the focus of attention in analyses of securities case settlements, even though more than half of securities cases continued to settle for less than \$10 million. What will be interesting going forward is to see whether the upward shift emerging from the 2007 data for more typical cases persists into future years,” said Dr. Laura Simmons, a senior advisor to Cornerstone Research and an author of the report.

Estimated damages are by far the most important determinant of settlement amounts. For purposes of the report, “estimated damages” are based on a highly simplified model historically used by plaintiffs to estimate the amount of shares damaged and the amount of alleged stock price inflation. Following the unusually high average estimated damages for settled cases in 2006, 2007 saw a return to the 2003–05 average. While 2006 had eighteen settlements with estimated damages in excess of \$5 billion, 2007 had just ten. In 2007 only 24 percent of settlements (twenty-seven cases) involved estimated damages of \$1 billion or more—the lowest percentage since 2003.

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“It seems clear that the aggregate dollar value of settlements over the next two or three years is likely to decline significantly because the inventory of large cases in the pipeline just isn’t there. The interesting open question is whether the subprime crisis will cause an uptick in securities fraud settlement activity that might, given settlement cycles in the litigation industry, only become apparent three to five years from now,” said Stanford Law School Professor Joseph Grundfest, director of the Securities Class Action Clearinghouse (sponsored in cooperation with Cornerstone Research), co-director of the Rock Center on Corporate Governance, and former commissioner of the Securities and Exchange Commission.

Institutional investor involvement continued to increase, with almost 60 percent of cases settled in 2007 including institutions as lead plaintiffs. Typically, cases involving institutional investors as lead plaintiffs, particularly public pension plans, are associated with significantly higher settlement amounts, even controlling for other factors that affect settlement amounts.

As in 2006, accounting issues continued to be included in the allegations of more than 55 percent of all settled cases. But for the second year in a row, the percentage of cases involving allegations of financial statement restatements declined, representing just 30 percent of settlements in 2007.

The report also notes the waning dominance, on a combined basis, of two prominent plaintiff class action law firms —Lerach Coughlin Stoia Geller Rudman & Robbins (now known as Coughlin Stoia Geller Rudman & Robbins) and Milberg Weiss Bershad & Schulman (now known as Milberg)— in terms of the number of cases settled. Until 2007 the two firms had long served as lead or co-lead plaintiff counsel in more than half of securities class action settlements, but in 2007 their combined share slipped to 46 percent.

Finally, the number of settled cases involving companion derivative actions has been increasing in recent years. More than 55 percent of cases settled in 2007 were accompanied by the filing of a derivative action, compared with 45 percent in 2006 and 35 percent in 2005. While the settlement of a derivative action does not necessarily result in a cash payment, settlements for class actions accompanied by derivative cases are significantly higher than for cases not involving them.

A full copy of Cornerstone Research’s *Securities Class Action Settlements: 2007 Review and Analysis* is available at securities.cornerstone.com. In addition, Dr. Simmons and Professor Grundfest are available for interviews.

Cornerstone Research provides financial and economic analysis in litigation and regulatory proceedings, with a focus on securities, antitrust, intellectual property, financial institutions, energy, and accounting. Cornerstone Research also cosponsors Stanford Law School’s Securities Class Action Clearinghouse, the leading source of data and analysis on the financial and economic characteristics of securities class action litigation. Information about Cornerstone Research’s consulting services is available at www.cornerstone.com.

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