

Securities Class Action Case Filings

2004: A Year in Review

Research Sample

- The sample includes 1,733 federal class action filings in calendar years 1996 through 2004.
- The class action filings include 313 “IPO Allocation” filings, 63 “Analyst” filings and 40 “Mutual Fund” filings.
- The Stanford Law School Securities Class Action Clearinghouse, in cooperation with Cornerstone Research, identified filings as of 12/20/04.

Overview

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A review of securities class action filings in calendar year 2004 reveals a number of interesting findings. Most notably, filing activity increased in 2004 when compared to 2003, approaching the highs observed in 2000 and 2002. After removing special cases (described in more detail below), the 212 “traditional” securities class action suits filed in 2004 represented a 17 percent increase from the 181¹ cases filed in 2003 and 12 percent increase from the 1996 – 2003 average of 190. In addition, total market capitalization losses for all filings in 2004 increased from 2003. The Disclosure Dollar Loss Index (DDL Index™) nearly tripled from \$58 billion to \$169 billion for cases filed in 2004. This increase in DDL can be attributed to 8 “mega” filings (with DDL over \$5 billion) compared to only one “mega” filing in 2003.

The number of filings with accounting-related allegations remained relatively constant in 2004, declining to 102 (48 percent) in 2004 from 107 (59 percent) in 2003. In addition, significant new developments in 2004 were cases related to “Bid Rigging” in the insurance industry and COX-2 inhibitors, which were responsible for 35 percent of disclosure market capitalization losses. Comparing filings by exchange, as in previous years, the median 2004 maximum dollar loss and disclosure dollar loss for NYSE and Amex firms were significantly higher than the medians for Nasdaq firms. Finally, the top three industry sectors in 2004 in terms of number of issuers sued were Consumer Non-Cyclical, Technology, and Communications. This *Year in Review* describes these and other findings in more detail. Exhibit 1, the “Complaint Filings Box Score,” provides a general overview.

Complaint Filings Box Score

	2003	Average (1996-2003)	2004
Class Action Filings	181	190	212
Maximum Dollar Loss (\$ Billions)	\$542	\$702	\$705
Disclosure Dollar Loss (\$ Billions)	\$58	\$119	\$169

Note: All figures exclude IPO Allocation, Analyst, and Mutual Fund filings.

Exhibit 1

¹ There have been 6 additional cases identified in 2003 since our 2003: A Year in Review publication.

Classification of Filings and Number of Filings²

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A new type of class action filing occurred during each year from 2001 – 2003. First, in 2001 there were over 300 “IPO Allocation” filings with allegations related to share allocation in an initial public offering. Second, in 2002 there were a number of “Analyst” filings with allegations that defendants, primarily investment banks and individual analysts at these banks, had issued research reports and ratings that were neither independent nor objective. Third, in the second half of 2003, there were “Mutual Fund” filings that contained allegations related to market timing, lack of disclosure, and the breach of fiduciary duty by mutual fund companies and other financial intermediaries. In addition to mutual fund market timing cases, there were new mutual fund cases filed in 2004 with allegations related to the mutual fund fee structure and distribution procedures. In total, the number of “atypical” cases declined in 2004, with only 21 filings (20 “Mutual Fund” and 1 “Analyst”) occurring primarily in the first half of the year. As a result of the atypical filings in 2001 – 2004, we sort filings in this report into four categories: “IPO Allocation,” “Analyst,” “Mutual Fund,” and “Traditional” filings.

The IPO Allocation, Analyst, and Mutual Fund filings can be considered distinct types of class action lawsuits, having characteristics unlike the Traditional securities class action filings. Therefore, we consider the Traditional litigation to be a more appropriate measure of ongoing activity and we emphasize this measure in the comparisons provided throughout the report.

In order to evaluate trends and events in litigation over time, the Stanford Law School Class Action Clearinghouse, in cooperation with Cornerstone Research, has originated several litigation activity indices. The first group of indices measures the level of securities class action activity based solely on the number of filings. The Class Action Filings Index (CAF Index™) tracks a simple count of new cases, and the Filings per Issuer Index (FPI Index™) tracks filings related to companies listed on the NYSE, Nasdaq, and Amex as a percentage of companies listed on these exchanges at the start of the year.³

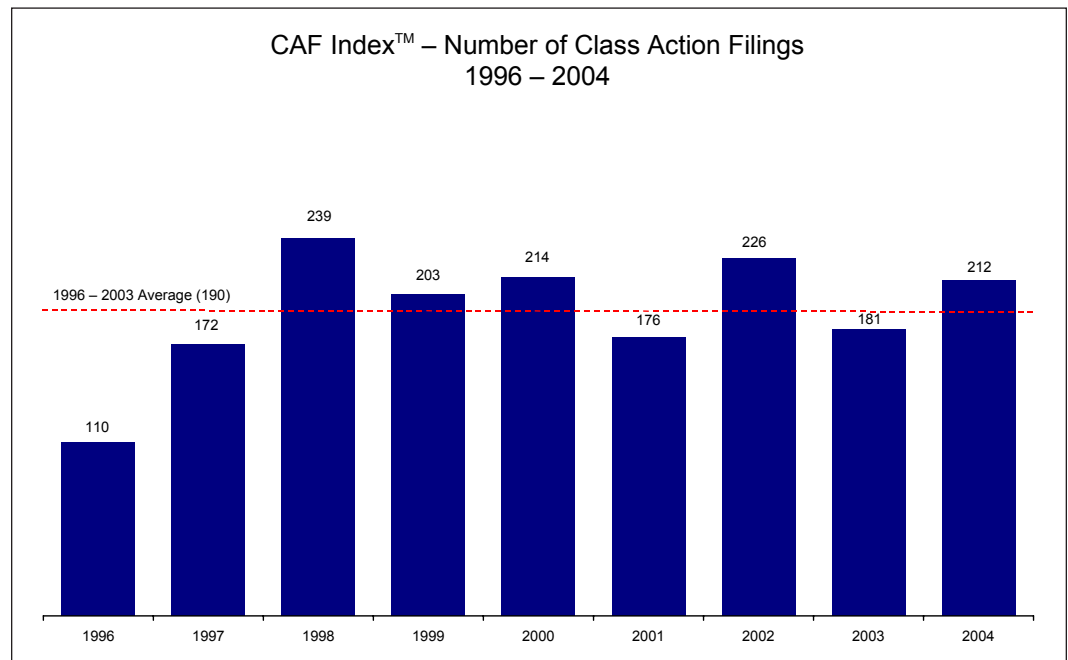


Exhibit 2

² Please visit securities.cornerstone.com for up-to-date information on the indices of litigation activity presented in this report.

³ We have slightly modified our definition of the FPI Index™ compared to last year's publication by excluding cases against issuers that are not traded on NYSE, Amex, or Nasdaq from this measure of litigation activity.

FPI Index

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The CAF Index™ tracks the number of filings throughout the calendar year. Excluding the IPO Allocation, Analyst, and Mutual Fund filings, the number of Traditional filings increased by 17 percent from 181 in 2003 to 212 in 2004 (see Exhibit 2).⁴ The CAF Index™ demonstrates the fluctuations in litigation activity over time, with the lowest activity in 1996, possibly in response to the 1995 adoption of the Private Securities Litigation Reform Act [“PSLRA”], and with the highest activity in 1998. Other years with high levels of litigation activity were 2000, 2002, and 2004.

The FPI Index™ also shows an increase in litigation activity in 2004 relative to 2003 (see Exhibit 3). Of the total companies listed on the NYSE, Nasdaq, and Amex at the start of the year, 2.8 percent were defendants in Traditional class action lawsuits filed in 2004 as compared to 2.4 percent in 2003. The 2.8 percent filings per issuer is higher than the post-PSLRA annual average.

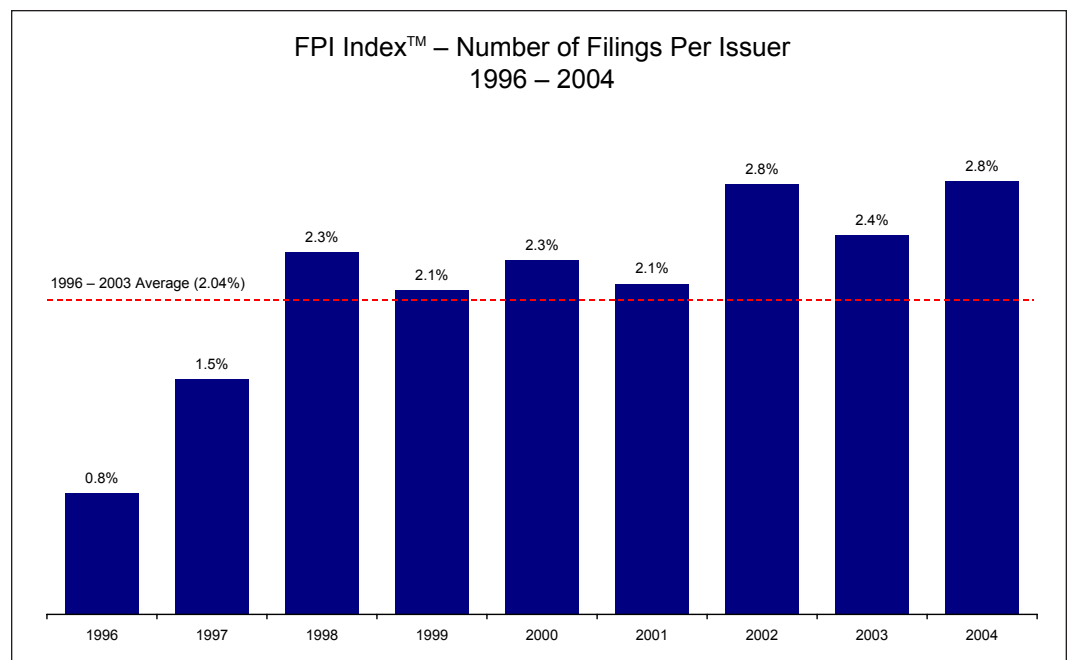


Exhibit 3

⁴ 2004 filings as of 12/20/04. There are typically very few cases filed after December 20 through the end of the year.

Market Capitalization Declines

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To measure the relative size of class action filings, our second group of indices tracks market capitalization declines during class periods. By assigning values that distinguish between multi-billion dollar market value loss filings (e.g. WorldCom) and much smaller market value loss filings, we develop a more comprehensive understanding of class action activity. Specifically, for each filing we calculate two measures of decline in the defendant firm's market capitalization: "maximum dollar loss" and "disclosure dollar loss." These measures reveal a dramatic falloff in securities class action activity in 2003 and 2004 when activity is measured in terms of market capitalization decline.

The first measure, maximum dollar loss, is calculated as the dollar value decrease in the market capitalization of the defendant firm from the trading day on which the defendant firm's market capitalization reached its maximum during the class period to the trading day immediately following the end of the class period. Maximum dollar loss does not measure potential liability; rather, it provides an indication of the loss in market value irrespective of the cause. The second measure, disclosure dollar loss, is calculated as the decrease in the market capitalization of the defendant firm from the trading day immediately preceding the end of class period to the trading day immediately following the end of the class period. As with the maximum dollar loss, the disclosure dollar loss should not be considered a measure of liability; it only represents an estimate of the impact of the market-, industry-, and firm-specific information revealed at the end of the class period, including information unrelated to the litigation.

We track maximum dollar losses and disclosure dollar losses using both simple dollar totals and totals relative to the size of the overall stock market. The Maximum Dollar Loss Index (MDL Index™) tracks the aggregate maximum dollar loss for all class action lawsuits filed year-to-date. The Maximum Percent Loss Index (MPL Index™) tracks the maximum dollar loss as a percentage of the Wilshire 5000.⁵

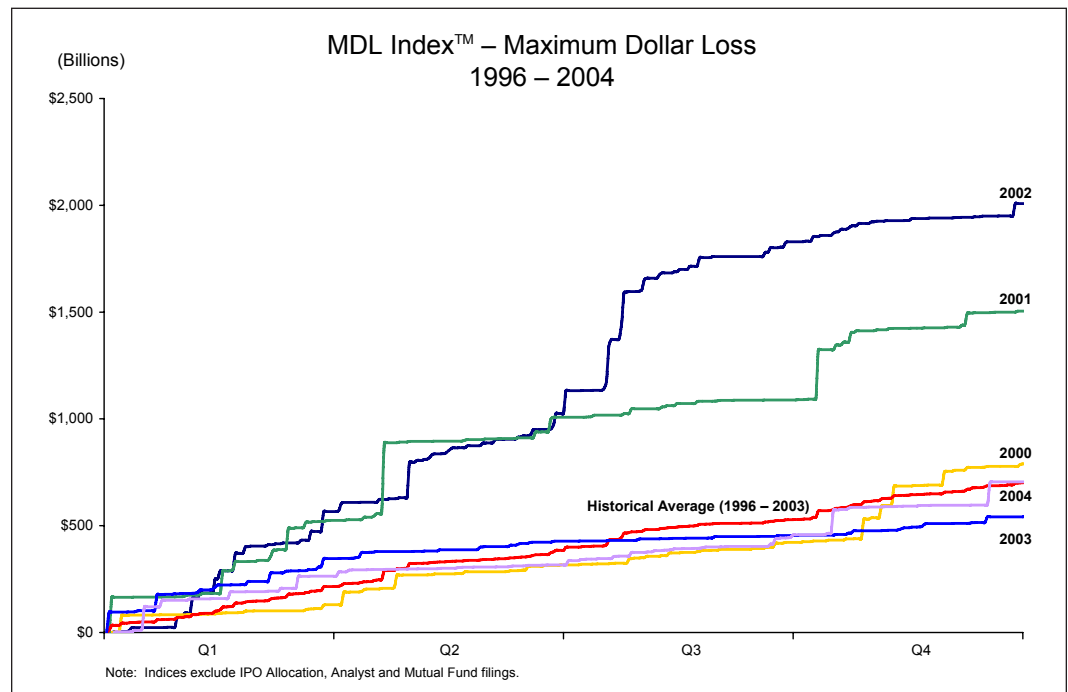


Exhibit 4

⁵ Please see securities.cornerstone.com for complete details on the MPL Index™ calculation.

Market Capitalization Declines *continued*

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The MDL Index™ shows an increase in market value declines for companies subject to class action filings in 2004 as compared to 2003 and is very similar to historical averages, but the loss level is still dramatically lower than when compared to 2001 and 2002 (see Exhibit 4). The total maximum dollar loss increased 30 percent in 2004 relative to 2003 and is almost the same as the 1996 – 2003 average, yet is 65 percent and 53 percent lower than 2002 and 2001, respectively. While a portion of the falloff from 2001 and 2002 levels can be attributed to the lower number of filings in 2003, the majority of the decrease in 2003 and 2004 is attributable to a lower market capitalization loss for the average filing. Specifically, the average filing in 2004 had a MDL of \$3.7 billion and \$3.3 billion in 2003, compared to an average of \$9.7 billion in 2002 and \$9.3 billion in 2001. Further, the MDL for the median (or midpoint) filing in 2003 and 2004 was \$0.5 billion, which is approximately one-third of the median MDL for 2002 filings. The MDL of 2003 and 2004 is much closer to the average from 1996 – 2003 of \$0.6 billion.

A closer look at annual data reveals that the MDL Index™ was significantly higher in 2001 and 2002 than in previous years (Exhibit 5). Many of the cases filed during 2000 – 2002 were related to the spectacular boom and bust of U.S. equities in the late 1990s – early 2000s. By the end of 2002, most high-profile securities class action cases related to the boom and bust had probably already been filed. Not surprisingly, the number of case filings and the losses of market capitalization exhibited by these filings went down in 2003 and 2004.

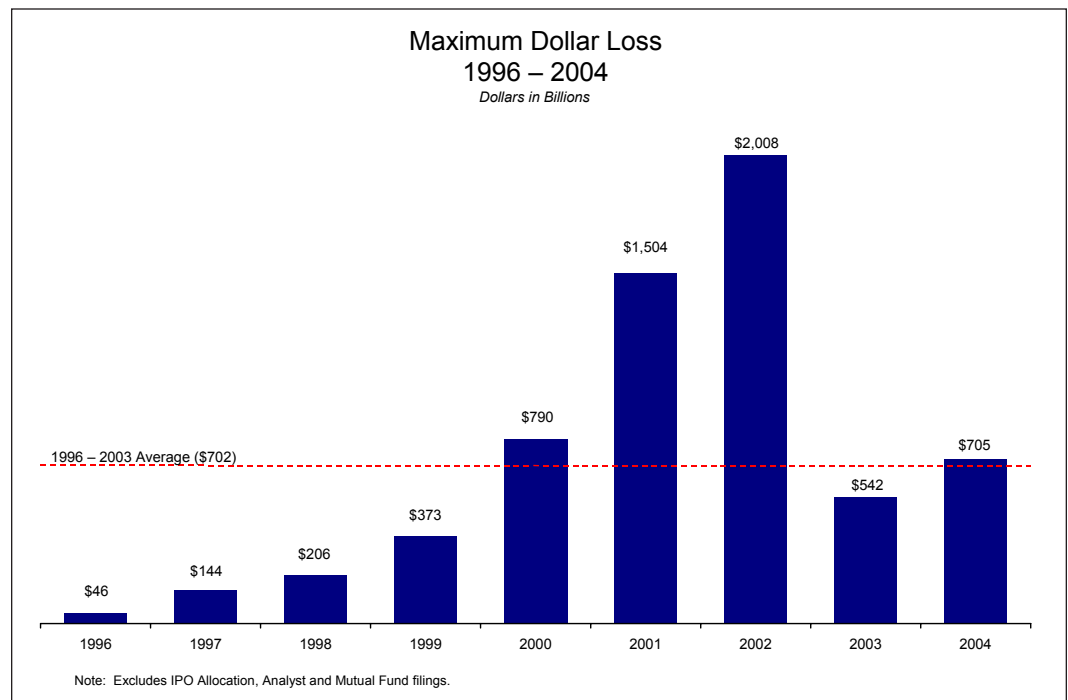


Exhibit 5

Market Capitalization Declines *continued*

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The MPL Index™ shows a similar decline. The maximum dollar loss for all filings in 2004 represented 6.0 percent of the Wilshire 5000 during the class periods (see Exhibit 6). This compares to 4.5 percent for filings in 2003 and 5.8 percent for cases filed during 1996 – 2003.

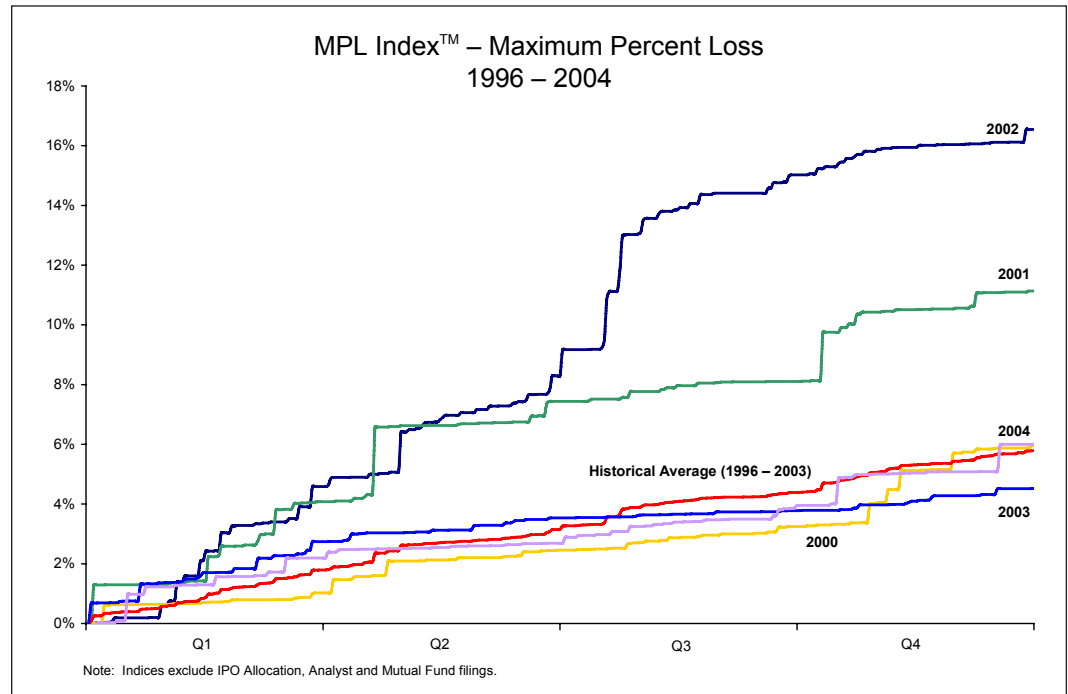


Exhibit 6

Clearly, market capitalization declines over extended periods of time may be driven by market and industry factors. To the extent that these declines are unrelated to specific allegations in class action complaints, indices based on aggregate losses during class periods would not be representative of potential defendant exposure to class action activity.

In addition to measuring the maximum market capitalization decrease that occurred in each class period, we also track the market capitalization decrease at the end of each class period using disclosure dollar loss. We measure disclosure dollar losses using both simple dollar totals and totals relative to the size of the overall stock market.

The Disclosure Dollar Loss Index (DDL Index™) tracks the sum of disclosure dollar losses for all class action lawsuits filed year-to-date. Similarly, the Disclosure Percent Loss Index (DPL Index™) tracks the sum of disclosure dollar losses as a percentage of the Wilshire 5000.⁶

⁶ Please see securities.cornerstone.com for complete details on the DPL Index™ calculation.

Market Capitalization
Declines *continued*

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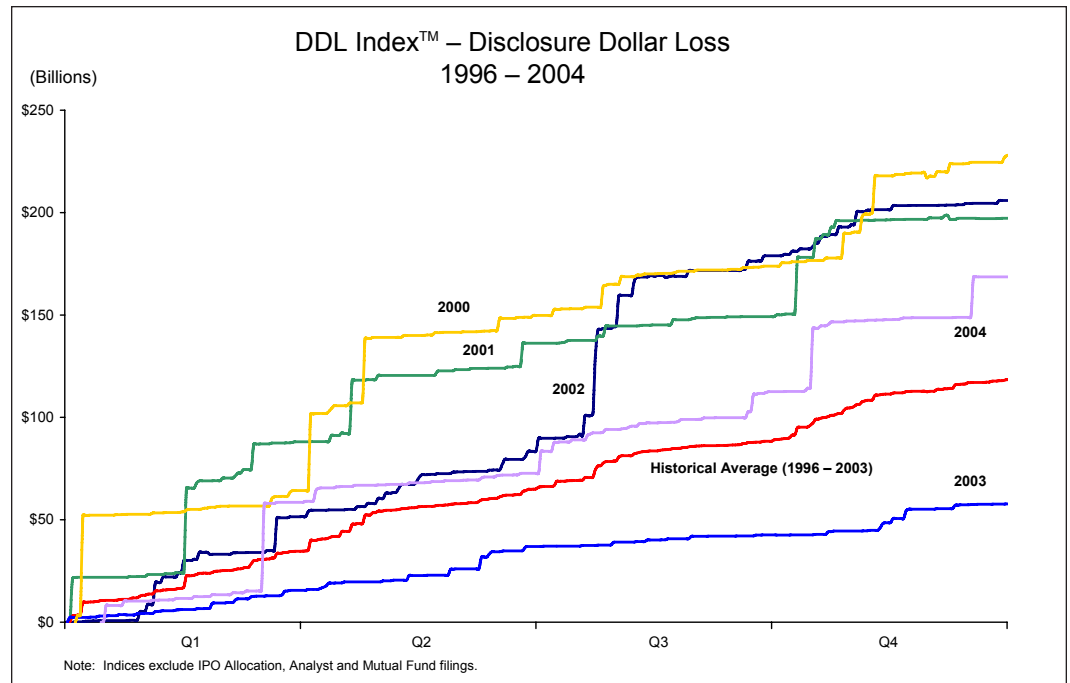


Exhibit 7

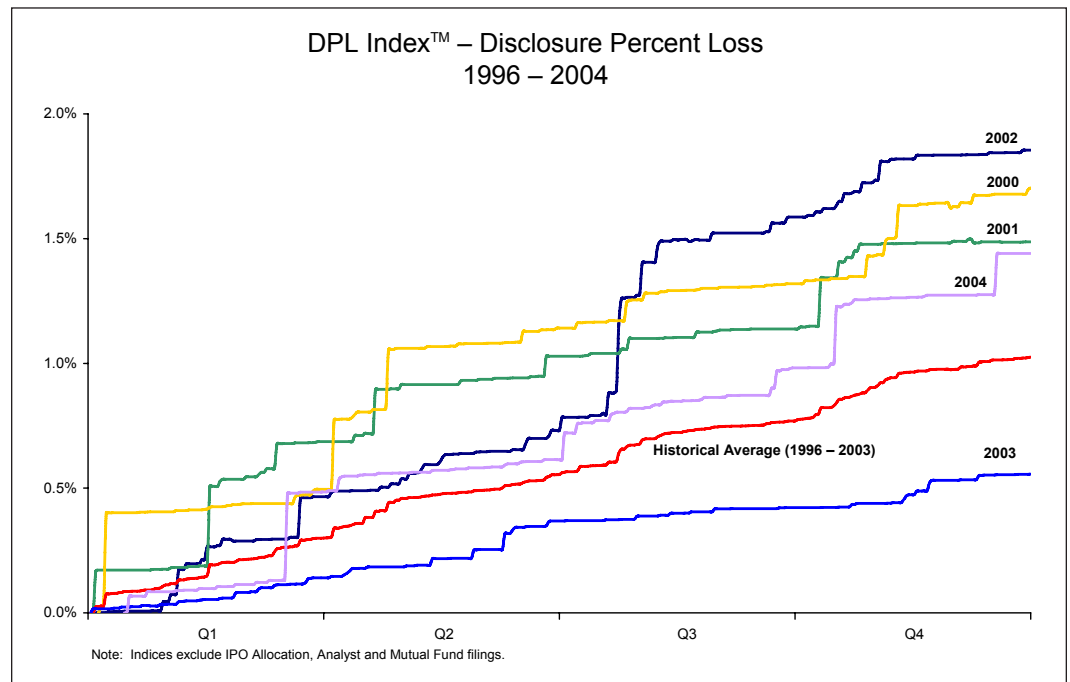


Exhibit 8

Market Capitalization Declines *continued*

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In contrast to the MDL indices, the DDL Index™ and the DPL Index™ show a dramatic increase in disclosure losses in 2004 compared to 2003, surpassing the historical averages, although still lower than levels reached in 2000 – 2002 (see Exhibits 7 and 8). The total disclosure dollar loss increased 192 percent in 2004 relative to 2003 and was 42 percent higher than the 1996 – 2003 average. The total disclosure dollar loss in 2004 was \$169 billion, or 1.4 percent of the capitalization of the Wilshire 5000 index. The total disclosure dollar loss represented 0.6 percent of the capitalization of the Wilshire 5000 index in 2003 and 1.0 percent of the capitalization of the Wilshire 5000 index from 1996 – 2003. As shown in Exhibit 9, disclosure dollar losses in 2004 rose sharply above 2003, but were still lower than the levels reached in 2000 to 2002. This increase appears to be the result of a few large cases, as the average DDL from 2003 – 2004 increased by 152 percent, while the median DDL decreased by 7 percent.

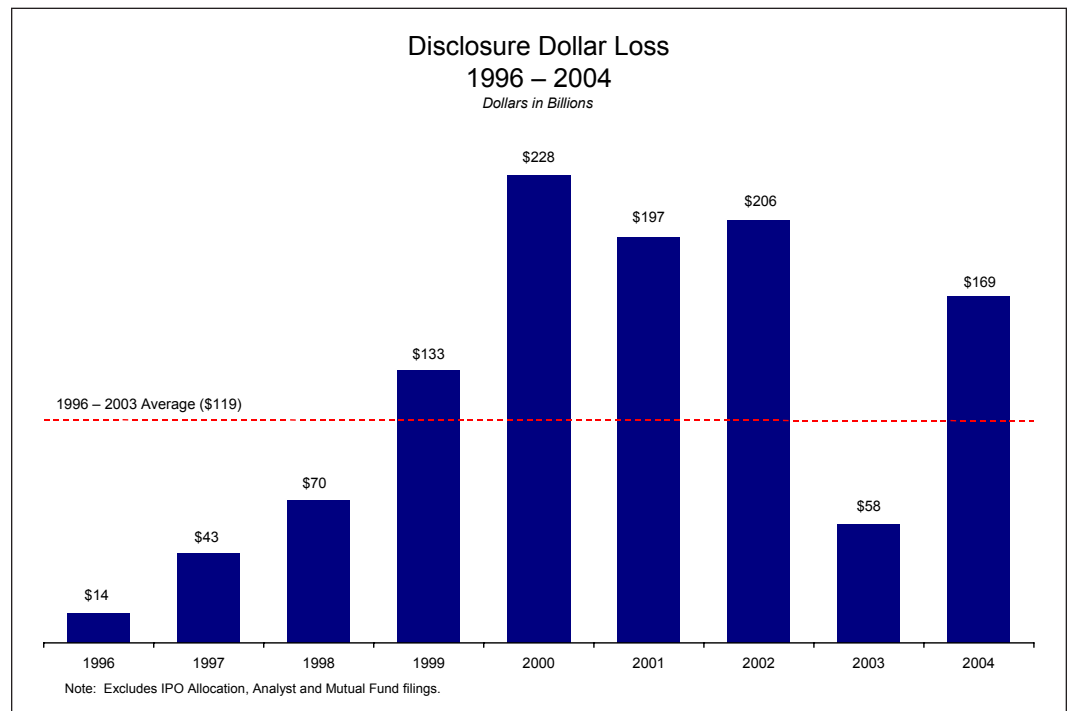


Exhibit 9

Market Capitalization Declines *continued*

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Exhibit 10, providing a more detailed look at the “average” and “median” filings, reveals that the size of market capitalization losses of the median (midpoint) filing in 2004 was very similar to 2003 and slightly below historical averages. The median maximum dollar loss of \$.48 billion in 2004 decreased 10 percent from the \$.54 billion median in 2003, decreased 68 percent from the \$1.5 billion median in 2002, and decreased 17 percent from the historical average of \$.58 billion during 1996 – 2003. The median disclosure dollar loss of \$97 million for 2004 represented a 7 percent decrease from the \$104 million median for 2003, and a 3 percent increase relative to the historical average of \$94 million.

Exhibit 10 indicates that litigation activity increased slightly in 2004 as measured by MDL, and increased significantly as measured by DDL. A few large cases in 2004 have greatly increased the average DDL, while the median DDL has slightly decreased. The next section takes a closer look at the large, “mega” filings.

Filings Comparison			
	2003	Average (1996-2003)	2004
Class Action Filings	181	190	212
Maximum Dollar Loss			
Total (\$ Billions)	\$542	\$702	\$705
Average (\$ Billions)	\$3.3	\$3.8	\$3.7
Median (\$ Billions)	\$0.5	\$0.6	\$0.5
Disclosure Dollar Loss			
Total (\$ Millions)	\$57,767	\$118,585	\$168,639
Average (\$ Millions)	\$350	\$652	\$883
Median (\$ Millions)	\$104	\$94	\$97

Note: All figures exclude IPO Allocation, Analyst, and Mutual Fund filings.

Exhibit 10

Mega Filings

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Analysis of “mega” filings provides additional evidence of the increase in litigation activity from 2003 to 2004.

Maximum Dollar Loss

Several “mega” filings dominated the maximum dollar loss totals in both 2003 and 2004. More specifically, in 2004:

- There were 15 filings in 2004 with a maximum dollar loss of \$10 billion or more. These 15 filings were responsible for 76 percent of total maximum dollar loss in 2004.
- There were 14 filings in 2003 with a maximum dollar loss of \$10 billion or more. These 14 filings were responsible for 67 percent of total maximum dollar loss in 2003.
- 2 filings had a maximum dollar loss of over \$100 billion, representing 30 percent of total maximum dollar loss in 2004.

Disclosure Dollar Loss

In 2004, “mega” filings contributed a higher percentage of total disclosure dollar loss figures than in 2003. More specifically, in 2004:

- 8 filings had a disclosure dollar loss of \$5 billion or more, and these filings accounted for 67 percent of total disclosure dollar loss in 2004.
- 3 filings had a disclosure dollar loss of over \$15 billion, representing 45 percent of total disclosure dollar loss in 2004.
- In contrast, only one filing in 2003 had a disclosure dollar loss of \$5 billion or more.

There were 112 maximum dollar loss “mega” filings and 43 disclosure dollar loss “mega” filings from 1996 to 2004. Of these, 72 maximum dollar loss “mega” filings and 26 disclosure dollar loss “mega” filings were concentrated in 2000 to 2002. These findings are consistent with our earlier observation that many securities lawsuits related to the boom and bust of U.S. equities at the turn of the century were filed during 2000 – 2002.

On average, from 1996 through 2003, “mega” DDL filings were responsible for 52 percent of total DDL. 2003 was atypical in that there were very few “mega” DDL filings. The non-“mega” filings in 2003 and 2004 were very close in size, so the dramatic increase in DDL in 2004 can be attributed to the “mega” filings.

Exchange Listing

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The calendar years 2003 and 2004 were characterized by relatively comparable numbers of securities class action filings for companies listed on Nasdaq versus the NYSE and Amex. In 2004, cases were filed against 85 firms whose stocks traded on the NYSE/Amex compared to 103 firms whose stocks traded on Nasdaq.⁷ In 2003, cases were filed against 76 firms whose stocks traded on the NYSE/Amex compared to 90 firms whose stocks traded on Nasdaq. Overall, in every year from 1996 – 2004, with the exception of 2002, there have been more class action filings against Nasdaq firms than against NYSE/Amex firms.

Similar to prior periods, the median maximum dollar loss and disclosure dollar loss for NYSE and Amex firms were significantly higher than the medians for Nasdaq firms in 2004 (see Exhibit 11). This finding is not surprising since the typical firm listed on NYSE has a larger market capitalization than the typical firm listed on Nasdaq.

Specifically,

- The total maximum dollar loss for NYSE/Amex firms in 2004 was \$592 billion as compared to \$100 billion for Nasdaq firms.
- The midpoint (median) maximum dollar loss for NYSE/Amex firms in 2004 was \$0.8 billion compared to \$0.3 billion for Nasdaq firms. Compared to historical averages for the typical maximum dollar losses, NYSE/Amex and Nasdaq cases were smaller in 2004.
- The total disclosure dollar loss for NYSE/Amex firms in 2004 was \$142 billion versus \$23 billion for Nasdaq firms.
- The midpoint (median) disclosure dollar loss for NYSE/Amex firms in 2004 was \$284 million compared to \$69 million for Nasdaq firms. These numbers for Nasdaq are close to average values for the 1996 – 2003 period, while the NYSE/Amex median disclosure dollar loss was 37 percent higher than the average for 1996 – 2003.

	2003		Average (1996-2003)		2004	
	NYSE/Amex	Nasdaq	NYSE/Amex	Nasdaq	NYSE/Amex	Nasdaq
Class Action Filings	76	90	68	97	85	103
Filings per Issuer	2.20%	2.70%	1.87%	2.11%	2.47%	3.13%
Maximum Dollar Loss						
Total (\$ Billions)	\$293	\$239	\$387	\$303	\$592	\$100
Average (\$ Billions)	\$4.3	\$2.8	\$5.4	\$3.1	\$7.7	\$1.0
Median (\$ Billions)	\$1.2	\$0.4	\$1.2	\$0.4	\$0.8	\$0.3
Disclosure Dollar Loss						
Total (\$ Millions)	\$38,493	\$19,015	\$79,436	\$36,857	\$142,231	\$22,971
Average (\$ Millions)	\$566	\$221	\$1,211	\$367	\$1,847	\$227
Median (\$ Millions)	\$150	\$93	\$207	\$72	\$284	\$69

Note: All figures exclude IPO Allocation, Analyst, and Mutual Fund filings.

Exhibit 11

NYSE firms contributed a higher percentage of the annual maximum dollar loss and annual disclosure dollar loss in all years since the adoption of the PSLRA except 2001. In 2001, there were almost twice as many cases filed against companies listed on the Nasdaq than on the NYSE/Amex (106 to 56).

⁷ 24 case filings in 2004 were for companies not listed on the NYSE, Amex, or Nasdaq.

In terms of the number of 2004 filings, the top four circuits were Circuit 9 (California) with 64 filings, Circuit 2 (New York) with 45 filings, and Circuit 11 (Alabama, Florida, and Georgia) with 20 filings (see Exhibit 12). This is the highest number of filings for Circuit 9 from 1996 – 2003. The top circuits in number of filings in 2003 were Circuit 2 with 39 filings, Circuit 9 with 35 filings, and Circuit 11 with 21 filings.

From 1996 – 2003, Circuit 9 had the greatest average number of class action filings with 49 per year. This is 32 percent higher than the next highest average number of class action filings (Circuit 2 with 37). Many Circuit 9 filings were against Internet-related companies that were most affected by the boom and the bust of U.S. equities at the turn of the century. Progressively fewer cases were filed in Circuit 9 in 2002 and 2003 after the collapse of the Nasdaq stock market, where most of these companies traded. In 2004, there was a resurgence of filing activity in Circuit 9, many of which were against Technology companies, especially software companies. More than half of the filings in the Technology sector were filed in Circuit 9.

Circuit	Class Actions Filings			Maximum Dollar Loss			Disclosure Dollar Loss		
	2003	Average 1996 – 2003	2004	2003	Average 1996 – 2003	2004	2003	Average 1996 – 2003	2004
1	13	11	9	\$20	\$22	\$3	\$2	\$6	\$1
2	39	37	45	\$167	\$173	\$284	\$16	\$19	\$70
3	15	17	19	\$29	\$86	\$84	\$5	\$25	\$46
4	5	7	7	\$11	\$20	\$7	\$3	\$3	\$3
5	16	16	18	\$52	\$48	\$142	\$3	\$9	\$10
6	13	10	5	\$42	\$46	\$13	\$5	\$10	\$8
7	8	9	12	\$12	\$25	\$44	\$6	\$6	\$4
8	8	8	6	\$28	\$12	\$8	\$7	\$3	\$1
9	35	49	64	\$148	\$199	\$81	\$8	\$24	\$14
10	7	6	5	\$13	\$25	\$1	\$0	\$4	\$0
11	21	20	20	\$20	\$32	\$12	\$4	\$8	\$3
12	1	1	2	\$0	\$12	\$25	\$0	\$2	\$8
Total	181	190	212	\$542	\$702	\$705	\$58	\$119	\$169

Note: All figures exclude IPO Allocation, Analyst, and Mutual Fund filings.

Exhibit 12

When the Circuits are ranked by maximum dollar loss, the top three Circuits in 2004 were Circuit 2 with \$284 billion, Circuit 5 (Texas/Louisiana/Mississippi) with \$142 billion, and Circuit 3 (Delaware/Pennsylvania) with \$84 billion. Circuit 5 and Circuit 2 contributed 2 cases each to the list of top 5 maximum dollar loss “mega” filings in 2004, while Circuit 3 contributed the other one. The top three Circuits in maximum dollar loss in 2003 were Circuit 2 with \$167 billion, Circuit 9 with \$148 billion, and Circuit 5 with \$52 billion. The Circuit 2 filings in 2003 were dominated by two of the top five maximum dollar loss “mega” filings. Historically, Circuits 2, 3, and 9 have experienced the largest maximum dollar losses.

The Circuits with the highest levels of disclosure dollar loss in 2004 were Circuit 2 with \$70 billion, Circuit 3 with \$46 billion, and Circuit 9 with \$14 billion. The largest disclosure loss “mega” filing in 2004 occurred in Circuit 3. The Circuits with the highest levels of disclosure dollar loss in 2003 were Circuit 2 with \$16 billion, Circuit 9 with \$8 billion and Circuit 8 (Arkansas/Iowa/Minnesota/Missouri/Nebraska/North Dakota/South Dakota) with \$7 billion. Historically, Circuits 2, 3, and 9 have had the largest disclosure dollar losses.

⁸ Circuit information corresponds to first identified complaint.

Exhibit 13 presents several measures of litigation activity intensity by sector. In 2004, the three sectors with the highest number of filings were Consumer Non-Cyclical, Technology, and Communications. From 1996 – 2003, Communications and Consumer Non-Cyclical had the highest average number of filings with 42 and 39 filings per year, respectively. The lowest numbers of filings were in Basic Materials, Utilities, and Energy sectors during the same period.

Consumer Non-Cyclical, Finance and Energy sectors had the highest maximum dollar losses in 2004. From 1996 – 2003, the Communications sector (which includes, under Bloomberg's classification, most Internet-related companies) was the largest contributor to the MDL Index™. Filings in Technology and Consumer Non-Cyclical sectors were a distant second and third in terms of maximum dollar losses.

Consumer Non-Cyclical, Finance and Energy sectors also had the highest disclosure dollar losses in 2004. The Energy sector was the second highest industry contributor to the DDL Index™ in 2004 with \$44 billion in disclosure dollar loss, a significant increase compared to the average DDL contribution of \$2 billion from 1996 – 2003. Consumer Non-Cyclical was the highest contributor with \$46 billion in disclosure dollar loss. In addition, the Consumer Non-Cyclical sector also had the largest contribution to the disclosure dollar loss in seven out of nine years following the adoption of PSLRA. Filings in Consumer Non-Cyclical and Communications sectors represented the greatest disclosure dollar losses from 1996 – 2003. Filings in Technology sector were a distant third in terms of disclosure dollar losses.

Filings by Industry									
Dollars in Billions									
Industry	Class Actions Filings			Maximum Dollar Loss			Disclosure Dollar Loss		
	Average 1996			Average 1996			Average 1996		
	2003	– 2003	2004	2003	– 2003	2004	2003	– 2003	2004
Consumer Non-Cyclical	49	42	60	\$84	\$106	\$275	\$19	\$35	\$46
Technology	19	32	37	\$66	\$108	\$62	\$4	\$19	\$12
Communications	26	39	31	\$240	\$297	\$51	\$8	\$31	\$15
Finance	25	23	27	\$39	\$57	\$163	\$10	\$10	\$44
Industrial	23	18	25	\$39	\$36	\$11	\$5	\$10	\$4
Consumer Cyclical	26	24	18	\$29	\$55	\$28	\$6	\$8	\$3
Energy	3	4	8	\$2	\$16	\$111	\$1	\$2	\$44
Utilities	5	4	4	\$5	\$19	\$2	\$2	\$2	\$1
Basic Materials	5	3	2	\$39	\$6	\$1	\$3	\$1	\$0
Total	181	190	212	\$542	\$702	\$705	\$58	\$119	\$169

Note: All figures exclude IPO Allocation, Analyst and Mutual Fund filings.

Exhibit 13

⁹ For the purposes of this analysis, we use the sector classifications provided by Bloomberg. According to Bloomberg, "sector" is the broadest classification that represents general economic activities of a company. Bloomberg divides companies into 10 sectors: Basic Materials, Communications, Consumer Cyclical, Consumer Non-Cyclical, Diversified, Energy, Financial, Industrial, Technology and Utilities.

New Developments

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Insurance “Bid Rigging” Cases

A number of securities class action filings have followed the October 14, 2004 announcement by New York Attorney General Eliot Spitzer that he had charged several of the nation’s largest insurance companies and the largest broker with bid rigging and pay-offs that he claimed violated fraud and competition laws. In 2004, 7 securities class actions were filed against insurance companies and an insurance broker alleging that their “bid-rigging” activities had artificially inflated the stock prices of these companies. The bid rigging cases differ from traditional securities class action lawsuits in that the allegations do not involve a misrepresentation directly related to financial performance. In addition to the securities lawsuits, there cases have related lawsuits alleging antitrust violations.

Product Liability

Securities filings relating to product liability is another type of filing seen in 2004 where the allegations were not directly related to financial performance. Announcements relating to the consumer health risks of COX-2 inhibitors led to the filing of securities class action lawsuits. This type of product liability securities class action filing may become more prevalent in the upcoming years.

The Insurance “Bid Rigging” cases and product liability cases were responsible for 35 percent of the Disclosure Dollar Loss in 2004.

ERISA Cases

In 2004, there were a number of ERISA (Employee Retirement Income Security Act) case filings that accompanied securities class action lawsuits. (The Stanford Law School Class Action Clearinghouse, in cooperation with Cornerstone Research, does not specifically track these cases.) The ERISA lawsuits were filed by participants of company-sponsored retirement plans that included company stock as an investment option. The filings included allegations that company stock was not a prudent investment option for an ERISA plan and that by including company stock as an investment option, plan sponsors failed to perform their fiduciary duties under ERISA.

The Mutual Fund Cases

As regulatory investigations of mutual funds companies continued to unfold in early 2004, 15 new securities class action lawsuits were filed. Many of the filings included allegations that mutual fund companies failed to disclose that they allowed “market timing” and late trading by selected groups of customers. In addition to mutual fund market timing cases, there were additional mutual fund cases filed in 2004 with allegations related to the mutual fund fee structure and distribution procedures.

¹⁰ Securities Class Action Filings 2003: A Year in Review, Cornerstone Research, <http://securities.cornerstone.com>

¹¹ See http://slw.issproxy.com/securities_litigation_blo/2003/10/judge_pollack_d.html

Classification of Complaints

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The Stanford Law School Class Action Clearinghouse in cooperation with Cornerstone Research tracks the content of class action complaints in addition to the level of filing activity.¹² A comparison of Traditional class action cases filed in 2004 with those in 2003 reveals similarities and differences in the types of allegations in class action complaints during these two years.

- As in 2003, the majority of cases filed in 2004 (184 cases or 87 percent) involved Section 10b-5 claims. Section 11 claims (12 cases or 6 percent) and Section 12(2) claims (9 cases or 4 percent) occurred less frequently.¹³
- Misrepresentations in financial documents (167 cases or 79 percent) remained the most frequent allegation in 2004 as in 2003. In 2004, false forward-looking statements were cited in 142 cases (67 percent) and GAAP violations were cited in 102 cases (48 percent).
- Auditors and underwriters were named as defendants in only a small percentage of filings in both 2004 and 2003. In 2004, auditors were named in the first identified complaint as defendants in 8 cases (4 percent), while underwriters were named in 3 cases (1 percent). In comparison, in 2003, auditors were named as defendants in 10 cases (6 percent), and underwriters were named in 4 cases (2 percent).
- Plaintiffs alleged that defendants used their “insider” information to benefit from trades of the company's common stock in 83 cases (39 percent) filed in 2004, compared to 58 cases (32 percent) in 2003.
- To the extent that specific accounting allegations could be identified in complaints and/or press releases, those allegations varied as greatly from case to case in 2004 as they did in 2003. The overall number of complaints alleging specific GAAP violations declined to 102 (48 percent) in 2004 from 107 (59 percent) in 2003. In addition, the order of the three most-frequently mentioned specific accounting allegations changed from 2003 to 2004. In 2004, the four most-commonly mentioned accounting allegations were revenue recognition (61 cases or 60 percent), overstatement of accounts receivable (17 cases or 17 percent), and overstatement of other assets or understatement of liabilities (15 cases or 15 percent each). In 2003, the most frequently-mentioned specific accounting allegation was overstatement of accounts receivable (60 cases or 56 percent), followed by revenue recognition (49 cases or 46 percent), and overstatement of other assets (24 or 22 percent).
- Fewer lawsuits were filed subsequent to bankruptcies in 2004 than in 2003. During 2004, only four class action lawsuits out of 172 (2 percent) were filed that involved firms already in bankruptcy, and no additional firms filed for bankruptcy subsequent to the filing of a class action lawsuit. In 2003, by contrast, companies sued in 14 out of 181 lawsuits (8 percent) had claimed bankruptcy by the time the complaints were filed. Six additional companies filed for bankruptcy during 2003 subsequent to the filing of a lawsuit.

¹² Statistics based on first identified complaint and therefore do not reflect allegations or defendants added subsequently.

¹³ Some filings are included in multiple classifications.

Classification of
Complaints *continued*

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Allegations Box Score

	2003		2004	
	Number	Percentage of total filings	Number	Percentage of total filings
General Characteristics				
10b-5 claims	164	91%	184	87%
Section 11 claims	18	10%	12	6%
Section 12(2) claims	10	6%	9	4%
Auditor defendant	10	6%	8	4%
Underwriter defendant	4	2%	3	1%
Allegations				
Misrepresentations in financial documents	158	87%	167	79%
False forward looking statements	144	80%	142	67%
GAAP violations	107	59%	102	48%
Insider trading	58	32%	83	39%
		Percentage of cases with alleged GAAP violations		Percentage of cases with alleged GAAP violations
Specifics of Accounting Allegations				
Revenue recognition	49	46%	61	60%
Overstatement of accounts receivable	60	56%	17	17%
Overstatement of other assets [1]	24	22%	15	15%
Understatement of liabilities	10	9%	15	15%
Overstatement of inventory	13	12%	5	5%
Estimates	7	7%	5	5%
Acquisition accounting	7	7%	4	4%
Derivatives/hedging	3	3%	1	1%
Non-recurring items	9	8%	0	0%
Other	13	12%	10	10%

[1] Defined as all assets other than accounts receivable and inventory.

Exhibit 14

Cornerstone Research Publications

The following publications are also available from our offices:

Securities Class Action Case Filings: 2003: A Year in Review

Post-Reform Act Securities Lawsuits: Settlements Reported Through December 2003
by Laura E. Simmons and Ellen M. Ryan

Securities Class Action Case Filings: 2002: A Year in Review

Post-Reform Act Securities Lawsuits: Settlements Reported Through December 2002
by Laura E. Simmons and Ellen M. Ryan

Post-Reform Act Securities Lawsuits: Settlements Reported Through December 2001
by Laura E. Simmons

Securities Lawsuits: Settlement Statistics for Post-Reform Act Cases
by Laura E. Simmons

Estimating Damages in Patent Infringement Cases: An Economic Perspective
by Michael C. Keeley

Securities Class Action Litigation in First Quarter 1998
by Joseph A. Grundfest, Michael A. Perino, Paul Lomio, Erika V. Wayne and Rilla Reynolds

Securities Lawsuits: Settlement Statistics for 10b-5 Cases
by Laura E. Simmons

Securities Reform: Implications for Damages
by William H. Beaver, James K. Malernee and Cynthia L. Zollinger

Market Maker Activity on Nasdaq: Implications for Trading Volume
by John F. Gould and Allan W. Kleidon

Stock Trading Behavior and Damage Estimation in Securities Cases
by William H. Beaver, James K. Malernee and Michael C. Keeley

The Corporate Veil: When is a Subsidiary Separate and Distinct From its Parent?
by Ben C. Ball, Jr., Matthew S. Miller and Christine S. Nelson

Estimating Damages in Securities Fraud Cases
by William H. Beaver and James K. Malernee

Bank Charter Values and Risk Taking
by Michael C. Keeley

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