Securities Class Action Filings Remain Depressed in First Half of 2013, According to Mid-Year Report by Cornerstone Research and Stanford Law School

Filings with an Institutional Investor as a Lead Plaintiff Are Less Likely to Be Dismissed

Boston and Stanford, Calif., July 24, 2013—Federal securities class action filing activity remains at depressed levels in the first half of 2013, according to Securities Class Action Filings—2013 Mid-Year Assessment, a report prepared by Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse. There were 74 filings in the first six months of 2013, compared with 88 in the first half of 2012 and 64 in the second half of 2012. If the number of filings in the second half of 2013 is the same as in the first half, the total number of filings in 2013 will be the second-lowest number of annual filings since 1997.

The slight increase in filings compared with the second half of 2012 is primarily due to an increase in filings against technology and energy companies. There were 10 such filings each against technology and energy companies in the first half of 2013, compared with four and three, respectively, in the second half of 2012.

The loss of market capitalization associated with filings decreases in 2013 and remains far below the historical averages observed between 1997 and 2012. The total disclosure dollar loss of $25 billion in the first six months of 2013 was less than half of the semiannual average of $63 billion from 1997 to 2012. The total maximum dollar loss of $113 billion in the first half of 2013 was 65 percent below the average of $326 billion in the six-month periods between 1997 and 2012.

In addition, a new analysis finds that filings with an institutional investor as a lead plaintiff were less likely to be dismissed and more likely to reach a ruling on summary judgment than filings without an institutional investor as a lead plaintiff. For filings from 1996 through 2010, 35 percent of cases with an institutional investor as a lead or co-lead plaintiff were dismissed, compared with 42 percent without an institutional investor.
Commentary

Dr. John Gould, Senior Vice President of Cornerstone Research:

In prior research, we have found that the presence of an institutional investor as the lead or co-lead plaintiff matters when it comes to settlements. Settlements for cases with an institutional investor plaintiff are higher, even after controlling for “hard” factors such as an estimate of shareholder losses and “soft” factors such as an accompanying SEC investigation or accounting allegations. The current finding that cases with an institutional investor plaintiff are less likely to be dismissed provides support that part of this effect may be due to the fact that institutions tend to be involved in “stronger” cases.

Professor Joseph Grundfest, Director of the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research:

On a going-forward basis, a change in defense litigation strategy is likely to be the most significant development in the securities fraud litigation market. In Amgen, four justices of the Supreme Court invited arguments over the continued vitality of the “fraud on the market” doctrine—a legal rule that allows plaintiffs to prosecute class actions without having to demonstrate that they actually relied on the alleged misrepresentation. The defense bar is rising to the invitation. We are observing class certification challenges on the grounds that the fraud on the market doctrine should not apply. If this defense strategy is successful, and if the Supreme Court eventually backs away from the fraud on the market doctrine, then the class action securities fraud litigation market will likely shrink significantly. This potential evolution in legal doctrine likely represents the largest “risk factor” for anyone trying to predict the future course of the securities fraud litigation market.

Key Findings

- During the last 18 months, at least 8 percent of all filings were against companies listed on the Over-the-Counter Bulletin Board and Pink Sheets, twice the average historical rate. In contrast, filings against companies in the S&P 500—those with larger market capitalizations—have declined in recent years, culminating in the first half of 2013 with the least amount of filing activity we have observed in the 13 years for which we have collected data.

- Seven federal filings associated with mergers and acquisitions took place during the first half of 2013, compared with eight and five in the first and second halves of 2012, respectively. These actions are now being pursued primarily in state courts after the unusual jump in federal M&A filings in 2010 and 2011.

- The rush of filings against Chinese issuers listed on U.S. exchanges through reverse mergers has essentially ended. Two new cases have been filed in 2013—a substantial decline from the peak of 31 filings in 2011.

- A larger percentage of cases are being dismissed compared with prior years. For filings in the 2008 cohort, 50 percent have already been dismissed. For the 2009 and 2010 filing cohorts, dismissal rates increased to 53 and 56 percent, respectively. It is premature to determine if dismissal rates have continued to increase for more recent filing cohorts after 2010.

—More—
Dr. Gould and Professor Grundfest are available to speak with the media about *Securities Class Action Filings—2013 Mid-Year Assessment*. The full text of the report is available at the Cornerstone Research ([www.cornerstone.com/securities](http://www.cornerstone.com/securities)) and Stanford Law School Securities Class Action Clearinghouse ([securities.stanford.edu](http://securities.stanford.edu)) websites.


The Securities Class Action Clearinghouse is an authoritative source of data and analysis on the financial and economic characteristics of federal securities fraud class action litigation.

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