

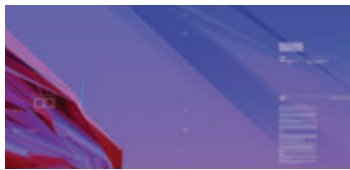
CORNERSTONE RESEARCH

ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

Shareholder Litigation Involving Mergers and Acquisitions

Review of 2013 M&A Litigation

Fillings | Multi-Jurisdictional Litigation | Litigation Outcomes



Background

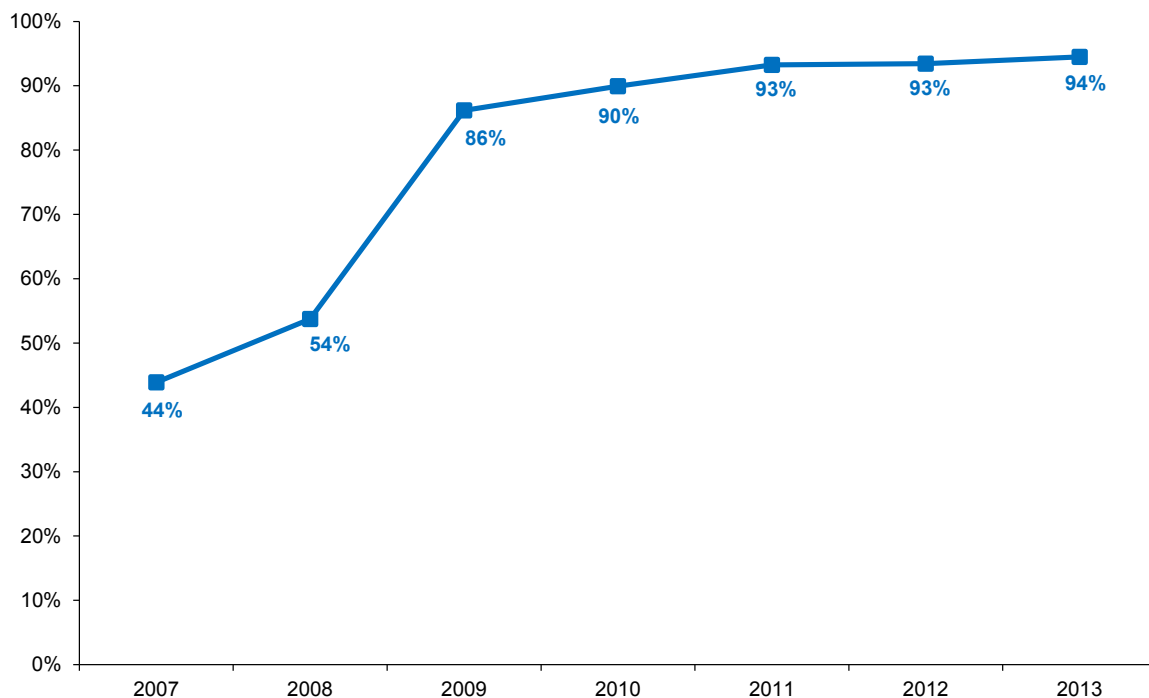
This report looks at litigation challenging M&A deals from 2007 through 2013, filed by shareholders of public target companies. These lawsuits usually take the form of a class action. Plaintiff attorneys typically allege that the target's board of directors violated its fiduciary duties by conducting a flawed sales process that failed to maximize shareholder value. Common allegations include the failure to conduct a sufficiently competitive sale, the existence of restrictive deal protections that discouraged additional bids, and conflicts of interest, such as executive retention or change-of-control payments to executives. Another typical allegation is that the target board failed to disclose enough information about the sale process and the financial advisor's valuation.

This report discusses lawsuit filings and outcomes. A forthcoming report will discuss settlements and plaintiff attorney fees.

HIGHLIGHTS

- For the fourth consecutive year, shareholders filed suit in more than 90 percent of M&A deals valued over \$100 million.
- In 2013, 94 percent of M&A deals were challenged by shareholders.
- M&A deals attracted an average of more than five lawsuits. With 26 lawsuits, the Dell Inc. buyout was the most litigated deal in 2013.
- The “race to file” appears to have subsided over the last five years.
- Sixty-two percent of deal litigation was multi-jurisdictional, although the percentage of deals litigated in three or more jurisdictions declined by half over the last two years.
- The most active courts for M&A litigation in the last four years (after Delaware Court of Chancery) were: New York County, NY; Santa Clara County, CA; and Harris County, TX.
- Litigation was resolved before deal closing in 75 percent of the deals. The great majority of lawsuits were settled.

**Figure 1: Percentage of Deals Challenged by Shareholders
(deals valued over \$100 million)**



Source: Thomson Reuters SDC; Dockets

Note: Percentages have been rounded to the nearest whole number.

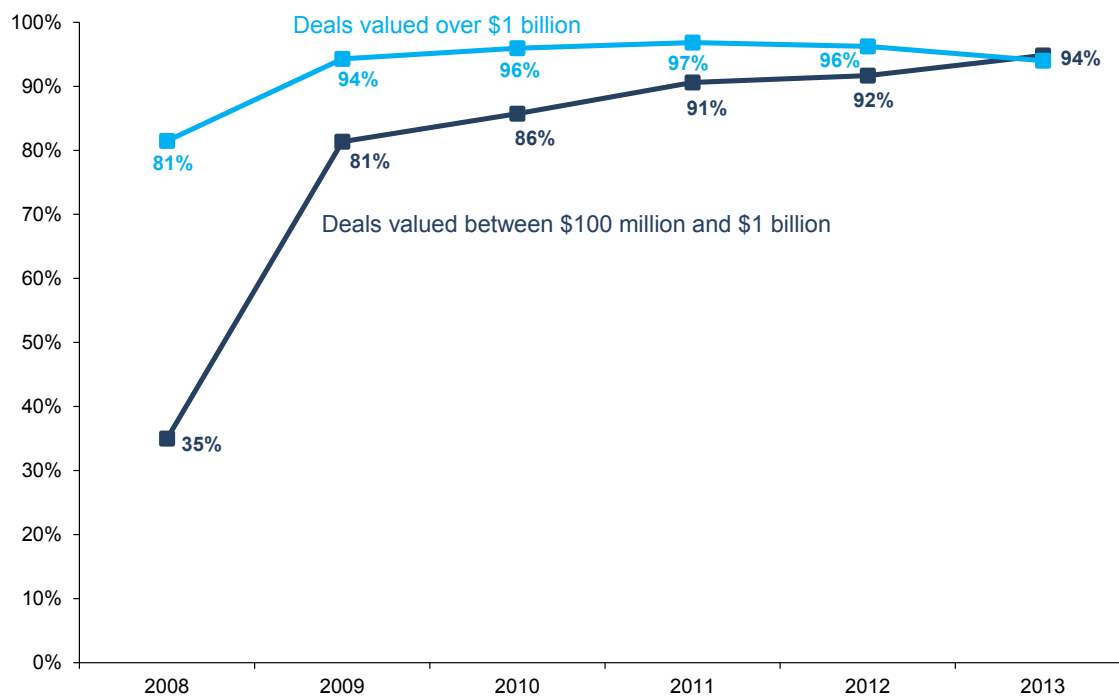
FILINGS

Most litigated deals of 2013 (by number of lawsuits)

Dell Inc. Buyout	26
Tellabs Inc. Buyout	16
Avago Technologies Ltd./ LSI Corporation	16
LinnCo LLC/ Berry Petroleum Company	14
Management Buyout of Dole Food Company Inc.	13
Toray Industries Inc./ Zoltek Companies Inc.	13
KKR & Co. L.P./ KKR Financial Holdings LLC	13
H.J. Heinz Company Buyout	12
Goldman Sachs & Co./ Ebix Inc.	12

- Plaintiff attorneys filed lawsuits in 94 percent of all M&A deals announced in 2013 and valued over \$100 million, a total of 612 lawsuits.
- For the first time, the percentage litigated among smaller deals (valued under \$1 billion) and larger deals (over \$1 billion) was the same.
- As in prior years, multiple lawsuits were filed for most deals, with an average of five lawsuits for deals valued over \$100 million, and 6.2 lawsuits for deals valued over \$1 billion.
- The “race to file” appears to have subsided over the last five years. In 2013, the first lawsuit was filed an average of 11.7 days after the deal announcement, compared with 9.3 days in 2012, and 6.5 days in 2009.

Figure 2: **Percentage of Deals Challenged by Shareholders**
(by deal value)



Source: Thomson Reuters SDC; Dockets

Note: Percentages have been rounded to the nearest whole number.

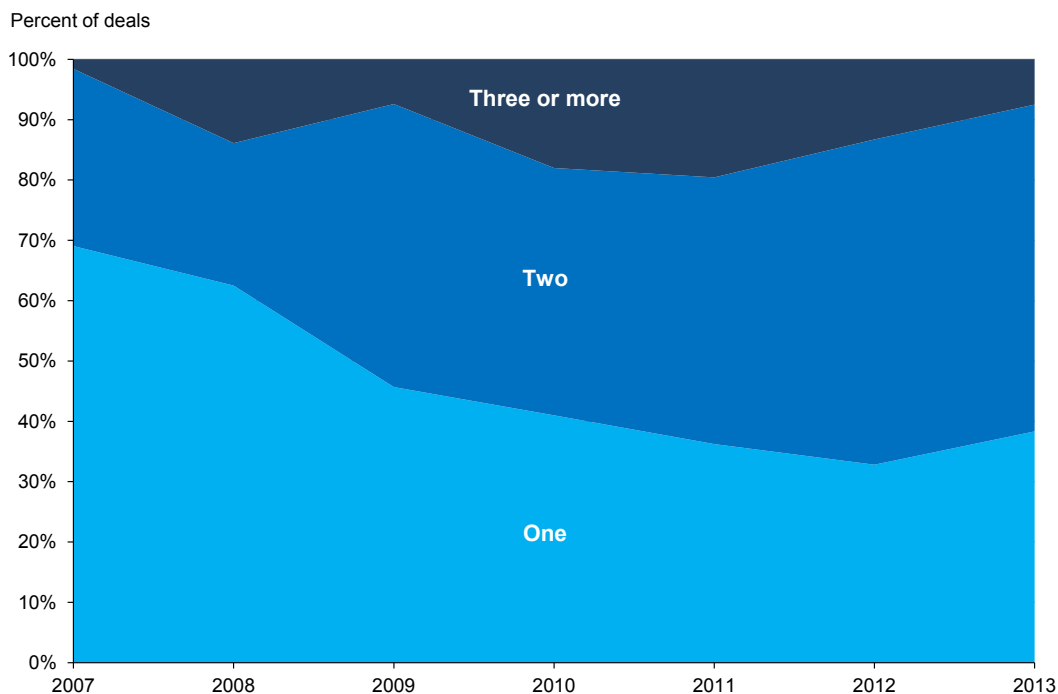
MULTI-JURISDICTIONAL LITIGATION

Most active courts 2010–2013, excluding Delaware (by number of deals litigated)

New York County, NY	39
Santa Clara County, CA	30
Harris County, TX	27
Los Angeles County, CA	17
Orange County, CA	15
San Diego County, CA	15
King County, WA	15
Baltimore County, MD	13
Hennepin County, MN	12

- Multi-jurisdictional challenges to M&A deals continued in 2013. Of the 2013 deals, 62 percent were litigated in more than one court.
- In 2013, the percentage of deals litigated in one, two, and three or more jurisdictions was 38, 54, and 8 percent, respectively.
- The percentage of deals litigated in three or more court has declined by half over the last two years.
- The most active courts for M&A litigation in the last four years (after Delaware Court of Chancery) were: New York County, NY; Santa Clara County, CA; and Harris County, TX.
- The LinnCo / Berry Petroleum deal was challenged in a record six different jurisdictions: Colorado, New York, and Texas federal courts; and Colorado, Delaware, and Texas state courts.

FIGURE 3: Number of Filing Jurisdictions



Source: Thomson Reuters SDC; Dockets

LITIGATION OUTCOMES

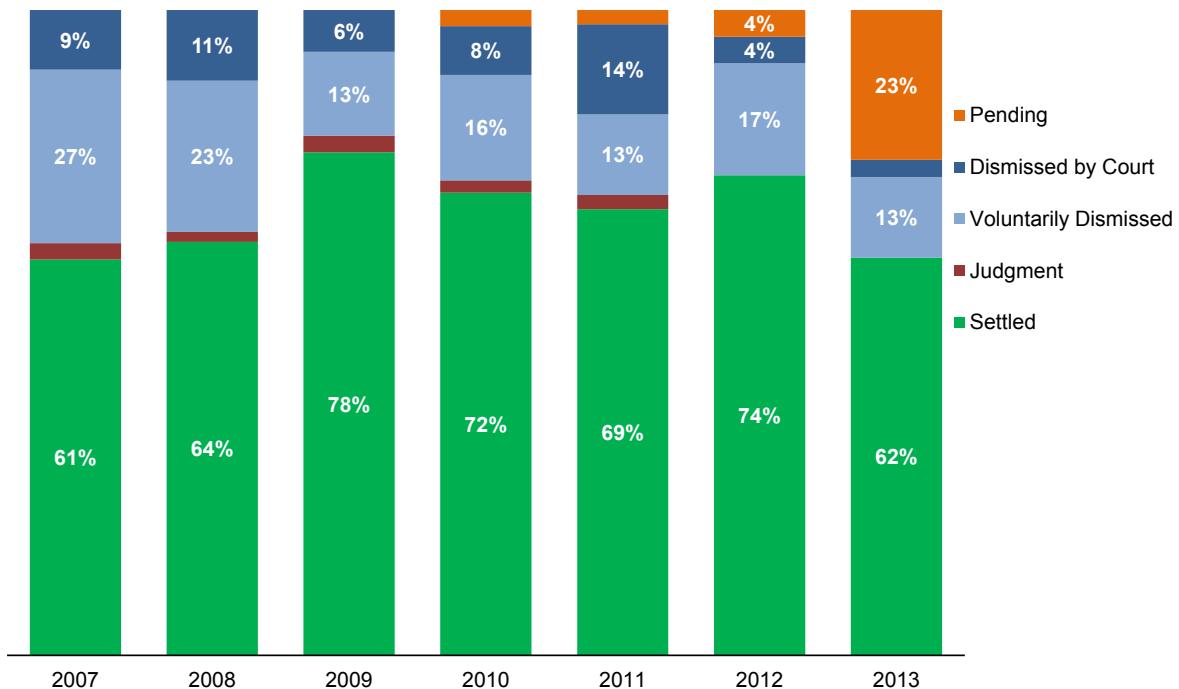
Percentage of deals for which litigation was resolved before closing (by deal announcement year)

2007	60%
2008	66%
2009	79%
2010	73%
2011	78%
2012	79%
2013	75%

Note: Percentages have been rounded to the nearest whole number

- As in prior years, litigation for the majority of deals was resolved before the deal was closed—75 percent of 2013 deals.
- Of the 2013 deals resolved before the deal closed, 88 percent were settled, 9 percent withdrawn by plaintiffs, and 3 percent dismissed by courts.
- Overall, the majority of M&A litigation settled, consistent with prior years.
- Lawsuits that were not settled before the deal closing remained pending for as long as four years. None of the lawsuits in the data went to trial, and all judgments (summary judgments or judgments on the pleadings) were granted to defendants.

FIGURE 4: Litigation Outcomes



Source: Thomson Reuters SDC; Dockets
 Note: Numbers may not add due to rounding.

The views expressed in this article are solely those of the author, who is responsible for the content, and do not necessarily represent the views of Cornerstone Research.

Please direct any questions, comments, or requests for information to Olga Koumrian. The author requests that you reference Cornerstone Research in any reprint of the figures included in this study and include a link to the report:

<http://www.cornerstone.com/Shareholder-Litigation-Involving-M-and-A-2013-Filings>

ABOUT THE AUTHOR

Olga Koumrian

M.B.A., Carnegie Mellon University

M.A., Stanford University

650.470.7053

okoumrian@cornerstone.com

Olga Koumrian, a principal of Cornerstone Research, has more than ten years of experience providing economic analysis in commercial litigation matters. She has experience across a range of industries, including high technology and real estate, and she has developed particular expertise in financial institutions, including banking and insurance, venture capital and private equity, mortgage financing, asset-backed securities, and issues related to the credit crisis.

Ms. Koumrian has managed a variety of cases involving corporate transactions, corporate governance, valuation, breach of contract, auditor liability, and intellectual property. She has worked on corporate transaction cases involving mergers, acquisitions, leveraged buyouts, venture capital investments, assets sales, spin-offs, and dividend payments. Ms. Koumrian has analyzed merger agreements and valuations as well as acquisition-related disclosures and board and management conduct in the sales process.

ABOUT CORNERSTONE RESEARCH

For more than twenty-five years, Cornerstone Research staff have provided economic and financial analysis of complex issues arising in commercial litigation and regulatory proceedings. The firm has four hundred fifty staff who work with a broad network of testifying experts to bring specialized knowledge and experience to each assignment.

Boston

617.927.3000

Chicago

312.345.7300

Los Angeles

213.553.2500

Menlo Park

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New York

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San Francisco

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202.912.8900

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