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# Securities Class Action Case Filings

# 2005: A Year in Review

## Research Sample

- The Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research identified filings as of 12/19/05.
- The sample includes 2,352 federal class action filings in calendar years 1996 through 2005.
- The class action filings include 313 "IPO Allocation" filings, 65 "Analyst" filings and 42 "Mutual Fund" filings.

## Overview



A review of securities class action filings in calendar year 2005 reveals a number of interesting findings.[1] Most notably, filing activity decreased in 2005 when compared to 2004 and historical averages. After removing special cases (described in more detail in footnote 3), the 176 "traditional" securities class action suits filed in 2005 represented a 17 percent decrease from the 213 cases filed in 2004 and a 10 percent decrease from the 1996–2004 average of 195. In addition, total market capitalization losses and disclosure dollar losses for all fillings in 2005 decreased significantly from 2004. The Maximum Dollar Loss Index (MDL Index™) decreased by 39 percent from $742 billion to $456 billion and the Disclosure Dollar Loss Index (DDL Index™) decreased 33 percent from $147 billion to $99 billion.[2]

The lower level of litigation activity may be related to a combination of three factors. First, the dramatic boom and bust of U.S. equities in the late 1990s–early 2000s is now sufficiently past, so that the large majority of lawsuits relating to fraud during that period are behind us. Second, it is also possible that improvements in corporate governance following high publicity filings and settlements such as Enron and WorldCom, along with the passage of the Sarbanes Oxley Act of 2002, have influenced the number of filings. Third, the U.S. stock market became less volatile in 2005 than at any time since 1996. Because volatility is an important determinant of the likelihood of securities litigation, lower volatility tends to be associated with a lower number of filings.

In 2005 there were marked increases in the percentage of filings that alleged misrepresentations in financial documents and false forward-looking statements. The percentage of filings alleging misrepresentations in financial documents increased from 78 percent in 2004 to 89 percent in 2005. Similarly, the percentage of filings alleging false forward-looking statements increased from 67 percent in 2004 to 82 percent in 2005. This trend suggests that the litigation market is now even more focused on the validity of financial results and forecasts presented in financial documents, such as SEC filings and press releases. Comparing filings by exchange, as in previous years, the median maximum dollar loss and disclosure dollar loss in 2005 for NYSE and Amex firms were significantly higher than the medians for Nasdaq firms. The Ninth Circuit (California) appears to be losing its prominence with fewer cases and smaller market capitalization losses compared to previous years. In a related trend, filing activity declined in the Technology and Communications sectors, as compared to other sectors. These two sectors moved away from being the "driver" of securities litigation as in more recent years. Finally, "atypical" class action filings became less prevalent, with only three cases related to mutual fund companies in 2005.

Complaint Filings Box Score

| | 2004 | Average (1996 – 2004) | 2005 |
|---|---|---|---|
| Class Action Filings | 213 | 195 | 176 |
| Maximum Dollar Loss ($ Billions) | $742 | $727 | $456 |
| Disclosure Dollar Loss ($ Billions) | $147 | $127 | $99 |

Exhibit 1

1 2005 filings are those identified as of 12/19/2005. There are typically very few cases filed during the remainder of the year.

2 Maximum dollar loss and disclosure dollar loss are defined in the "Market Capitalization Declines" section.

## Number of Filings[3]

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 all companies listed on these exchanges at the start of the year.

The CAF Index™ tracks the number of filings throughout the calendar year. Excluding IPO Allocation, Analyst, and Mutual Fund filings, the number of Traditional filings decreased by 17 percent from 213 in 2004 to 176 in 2005 (see Exhibit 2). 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.



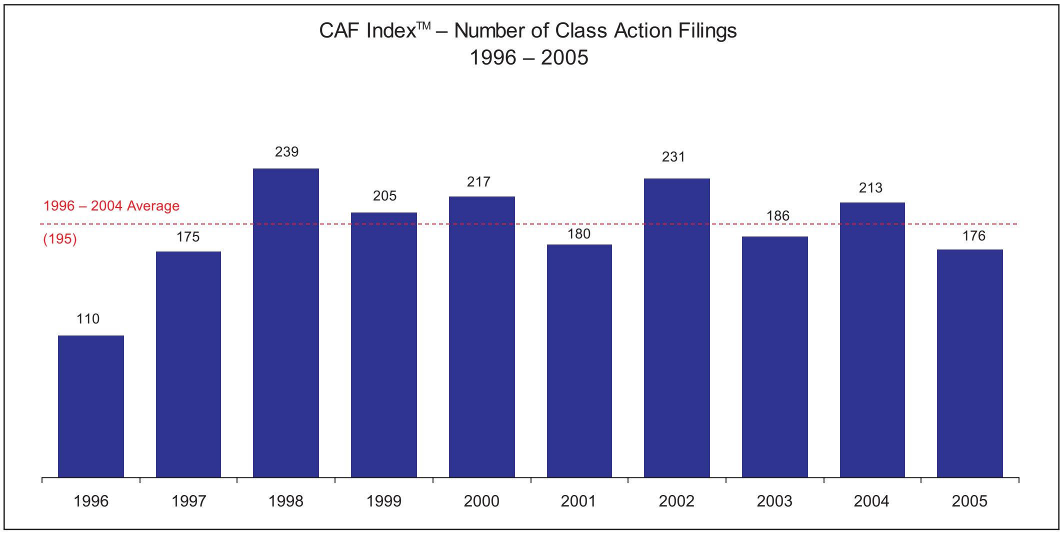



Exhibit 2

3 **Classification of Filings**
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 the 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, starting 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 and 2005 with allegations related to incentives and sales practices of the mutual funds' financial advisors. In total, the number of "atypical" cases declined in 2005, with only 3 filings, all Mutual Fund, occurring during the year. As a result of the atypical filings in 2001–2005, 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. Our indices and exhibits exclude IPO Allocation, Analyst, and Mutual Fund filings.

## Number of Filings *continued*

The Filings per Issuer (FPI Index™) also shows a decrease in litigation activity in 2005 relative to 2004 (see Exhibit 3). Of the total companies listed on the NYSE, Nasdaq, and Amex at the start of the year, 2.4 percent were defendants in Traditional class action lawsuits filed in 2005 as compared to 2.8 percent in 2004. The 2.4 percent filings per issuer, however, is higher than the post-PSLRA annual average of 2.15 percent.



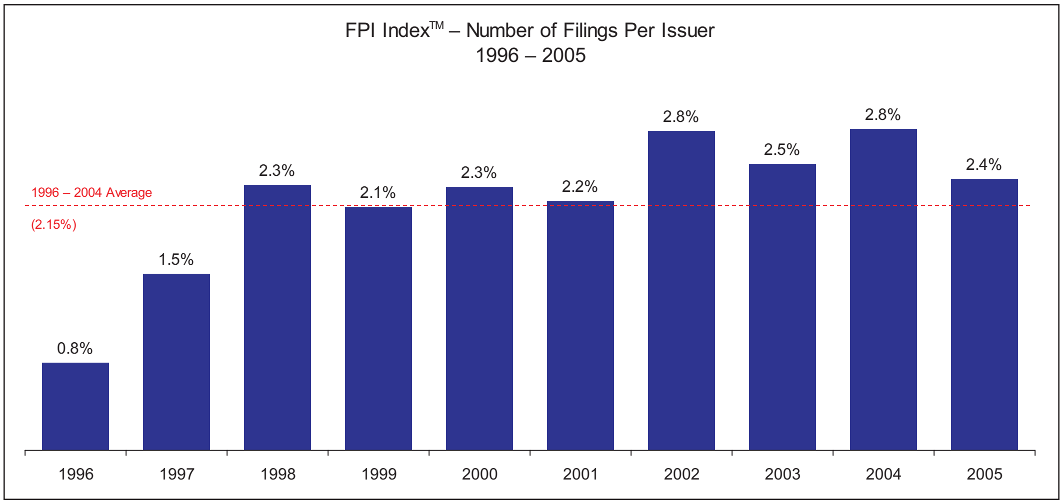



Exhibit 3

## Market Capitalization Declines

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 through 2005 relative to 2001 and 2002.

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.[4]

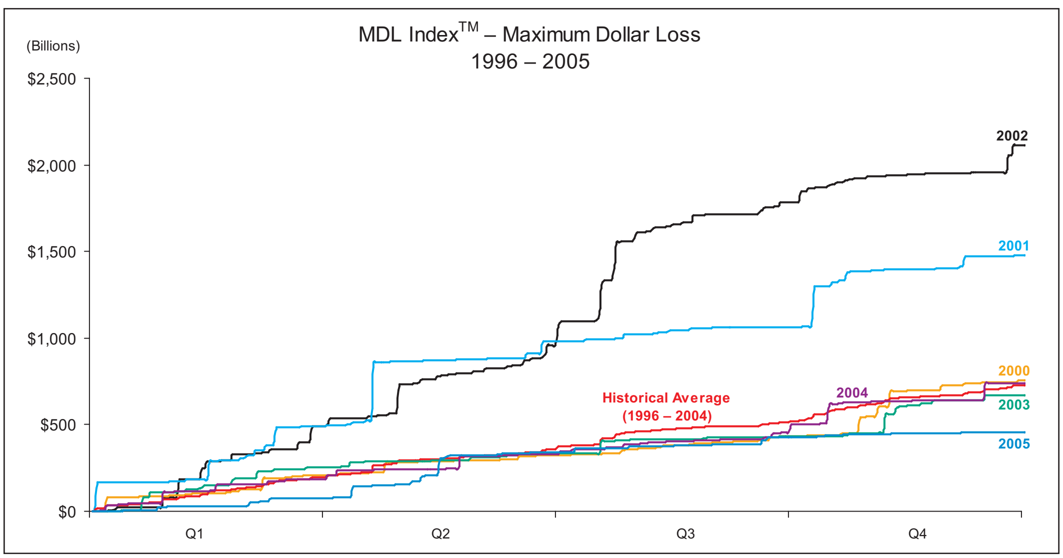



Exhibit 4

[4] Please see securities.cornerstone.com for complete details on the MPL Index™ calculation.

## Market Capitalization Declines *continued*



The MDL Index™ shows a decrease in market value declines for companies subject to class action filings in 2005 compared to 2004 and is still dramatically lower when compared to historical averages and 2001 and 2002 (see Exhibit 4). The total maximum dollar loss decreased 39 percent in 2005 relative to 2004 and is 37 percent lower than the 1996–2004 average. Compared to 2001 and 2002, the total maximum dollar loss in 2005 decreased 69 percent and 78 percent, respectively. While a portion of the falloff from 2001 and 2002 levels can be attributed to the lower number of fillings in 2005, the majority of the decrease in 2005 is attributable to a lower market capitalization loss for the average filing. Specifically, the average filing in 2005 had a MDL of $2.9 billion, compared to an average of $3.9 billion for 1996–2004. Further, the MDL for the median (or midpoint) filing in 2004 and 2005 was $0.5 billion, approximately one-third of the median MDL for 2002 filings. The median MDL of 2004 and 2005 is much closer to the typical median MDLs seen from 1996–2004 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 between 2000 and 2002 were related to the boom and bust of U.S. equities in the late 1990s–early 2000s. It is likely the case that by the end of 2002, most high profile securities class action cases related to the boom and bust had already been filed. Not surprisingly, the numbers of case filings and the losses of market capitalization underlying filings went down in 2003–2005. At the same time, it is not unreasonable to suggest that the lower number of filings and associated market capitalization losses are a result of improvements in corporate governance following high profile filings such as Enron and WorldCom and the passage of the Sarbanes Oxley Act of 2002. The decline in stock market volatility in 2005 may be yet another reason for the lower number of securities class action filings. Because volatility is an important determinant of the likelihood of securities litigation, lower volatility tends to be associated with a lower number of filings. Time will tell whether the observed decline in litigation activity in 2005 is cyclical or a start of a long-term trend.

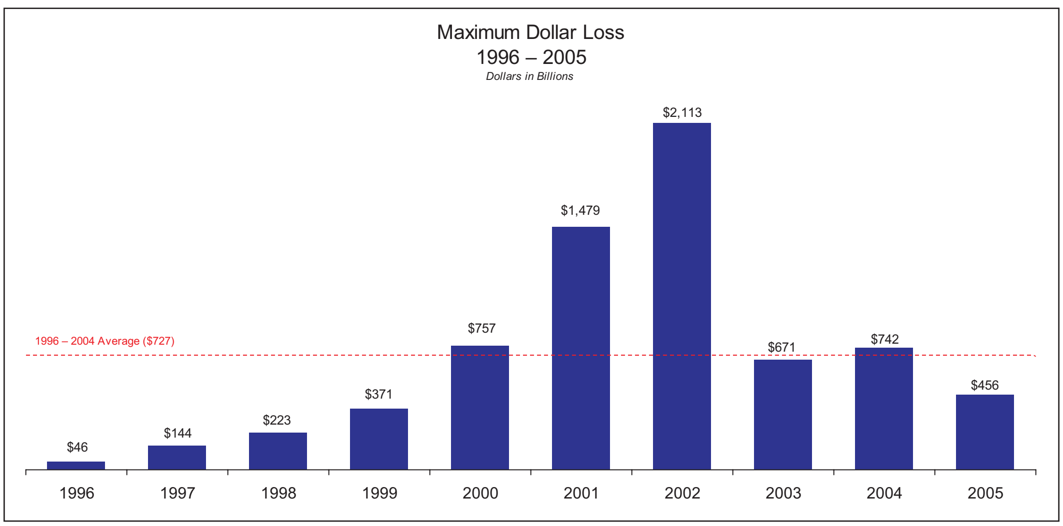



Exhibit 5

## Market Capitalization Declines *continued*

The MPL Index™ shows a similar decline. The maximum dollar loss for all filings in 2005 represented 3.9 percent of the Wilshire 5000 during the class periods (see Exhibit 6). This compares to 6.3 percent for filings in 2004 and 6.0 percent for cases filed between 1996–2004.



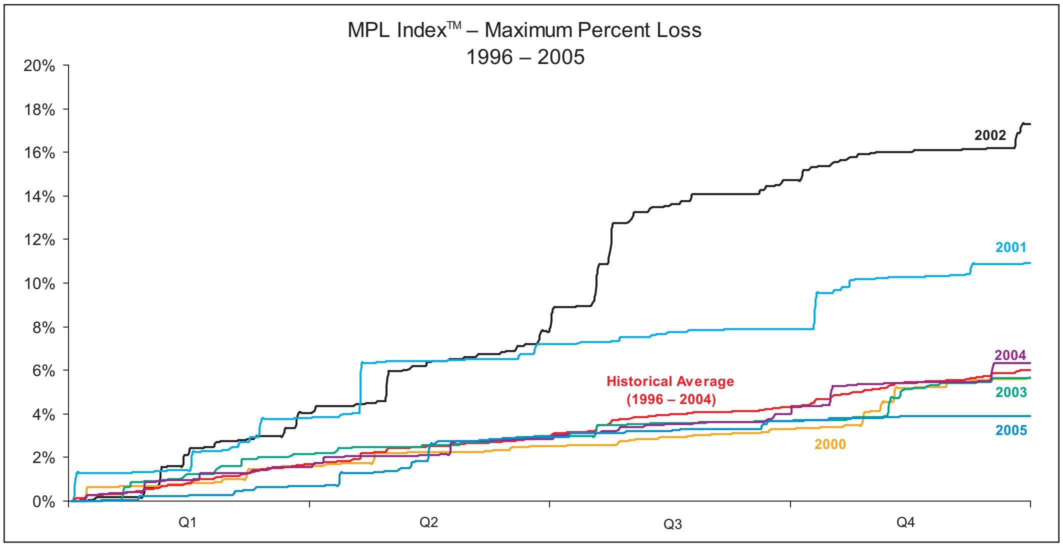



Exhibit 6

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. This is especially relevant for the post-*Dura* securities litigation environment (discussed in the "New Developments" section).

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 running sum of disclosure dollar loss for all class action lawsuits filed year-to-date. Similarly, the Disclosure Percent Loss Index (DPL Index™) tracks the running sum of disclosure dollar loss as a percentage of the Wilshire 5000.[5]

[5] Please see securities.cornerstone.com for complete details on the DPL Index™ calculation.

## Market Capitalization Declines *continued*



Exhibit 7

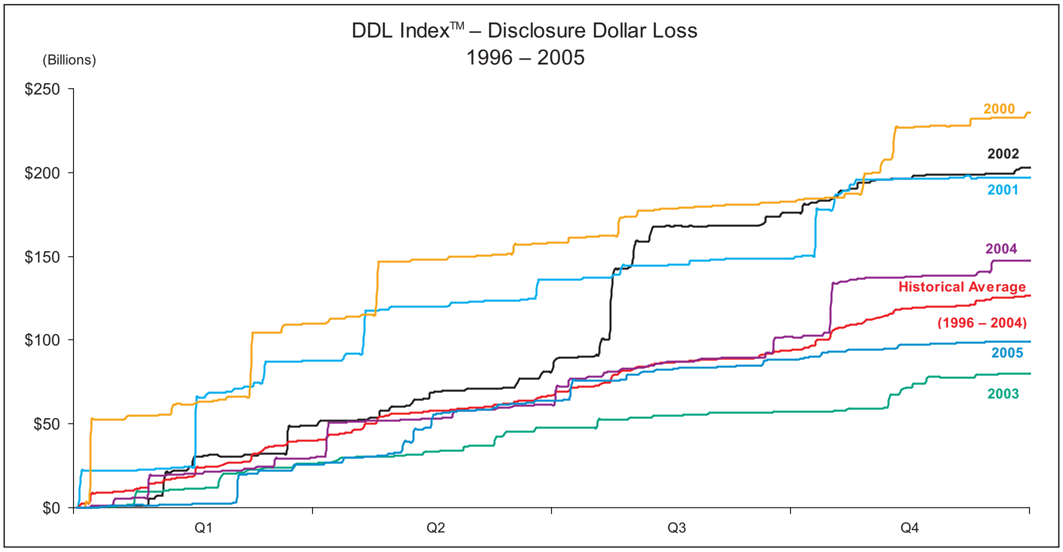
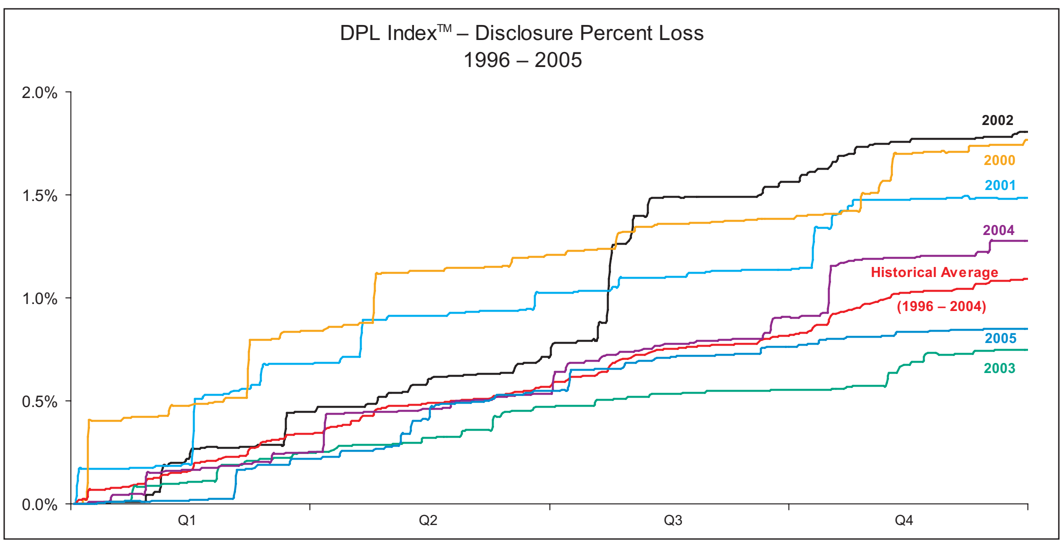



Exhibit 8



## Market Capitalization Declines *continued*

Similar to the MDL indices, the DDL Index™ and the DPL Index™ show a decrease in disclosure losses in 2005 compared to 2004, smaller losses than the historical averages, and significantly smaller losses than those experienced in 2000–2002 (see Exhibits 7 and 8). The total disclosure dollar loss decreased 33 percent in 2005 relative to 2004 and was 22 percent lower than the 1996–2004 average. Compared to 2001 and 2002, the total disclosure dollar loss in 2005 decreased 49 percent and 51 percent respectively. The total disclosure dollar loss in 2005 was $99 billion, or 0.9 percent of the capitalization of the Wilshire 5000. The total disclosure dollar loss represented 1.3 percent of the capitalization of the Wilshire 5000 in 2004 and 1.1 percent of the capitalization of the Wilshire 5000 from 1996–2004.

As shown in Exhibit 9, disclosure dollar losses in 2005 were lower than 2004, and much lower than the levels reached in 2000 to 2002. This decrease is the result of a combination of fewer number of filings and lower average DDL for cases filed in 2005 relative to 1996–2004.



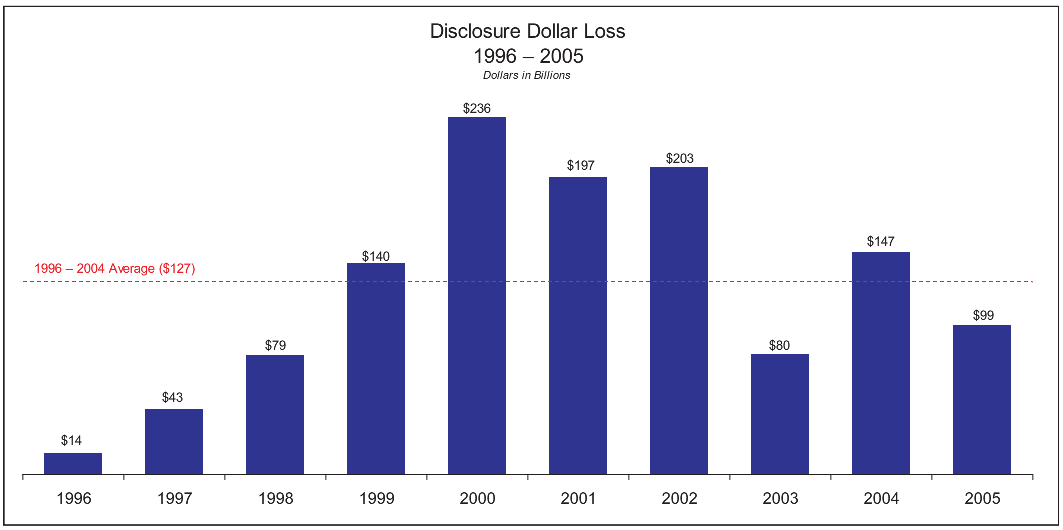



Exhibit 9

## Market Capitalization Declines *continued*

Exhibit 10 provides a more detailed look at the typical filing. The size of market capitalization losses of the median (midpoint) filing in 2005 was very similar to 2004 and slightly below historical averages. The median maximum dollar loss of $0.5 billion in 2005 was the same as in 2004, and a 17 percent decrease from the historical average of $0.6 million during 1996–2004. At the same time, the distribution of disclosure dollar losses became more balanced as the average disclosure dollar loss and median disclosure dollar loss moved closer together, with the median disclosure dollar loss of $160 million for 2005 representing a 67 percent increase relative to the historical average of $96 million.



Exhibit 10

Filings Comparison

| | 2004 | Average (1996 – 2004) | 2005 |
|---|---|---|---|
| Class Action Filings | 213 | 195 | 176 |
| Maximum Dollar Loss | | | |
| Total ($ Billions) | $742 | $727 | $456 |
| Average ($ Billions) | $3.9 | $3.9 | $2.9 |
| Median ($ Billions) | $0.5 | $0.6 | $0.5 |
| Disclosure Dollar Loss | | | |
| Total ($ Millions) | $147,330 | $126,677 | $99,111 |
| Average ($ Millions) | $771 | $685 | $635 |
| Median ($ Millions) | $125 | $96 | $160 |

## Mega Filings



Analysis of "mega" filings offers additional evidence of the decrease in litigation activity from 2004 to 2005.

**Maximum Dollar Loss**

In 2005, there was a lower number of maximum dollar loss "mega" filings, i.e., filings with maximum dollar loss of $10 billion or more. For example,

- There were 10 such filings in 2005. These 10 filings were responsible for 67 percent of total maximum dollar loss in 2005.
- There were 16 "mega" filings in 2004. These 16 filings were responsible for 77 percent of total maximum dollar loss in 2004.
- Only 3 filings had a maximum dollar loss of over $25 billion in 2005, compared to 8 filings in 2004.

**Disclosure Dollar Loss**

As in 2004, disclosure dollar loss figures for 2005 filings were less dominated by "mega" filings, i.e. filings with disclosure dollar loss of $5 billion or more. For example,

- There were 6 such filings in 2005. These filings accounted for 48 percent of total disclosure dollar loss in 2005.
- In contrast, there were 7 "mega" filings in 2004. These filings accounted for 56 percent of total disclosure dollar loss in 2003.
- Only 1 filing had a disclosure dollar loss of over $10 billion in 2005, compared to 3 filings in 2004.

There were 130 maximum dollar loss "mega" filings and 53 disclosure dollar loss "mega" filings from 1996–2005. Of these, 74 maximum dollar loss "mega" filings and 26 disclosure dollar loss "mega" filings were concentrated in 2000–2002. 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.

## Exchange Listing



The years 2004 and 2005 were characterized by relatively comparable numbers of securities class action filings for companies listed on Nasdaq versus the NYSE and Amex. In 2005, cases were filed against 77 firms whose stocks traded on the NYSE/Amex, compared to 84 firms whose stocks traded on Nasdaq.[6] In 2004, cases were filed against 86 firms whose stocks traded on the NYSE/Amex compared to 104 firms whose stocks traded on Nasdaq. Overall, from 1996–2005, 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 2005 (see Exhibit 11). This finding is not surprising since the typical firm listed on NYSE and Amex is bigger than the typical firm listed on Nasdaq.

Specifically,

- The total maximum dollar loss for NYSE/Amex firms in 2005 was $387 billion compared to $61 billion for Nasdaq firms.
- The midpoint (median) maximum dollar loss for NYSE/Amex firms in 2005 was $1.0 billion compared to $0.4 billion for Nasdaq firms. Compared to historical averages for the median maximum dollar loss, Nasdaq cases are close to the average value for 1996–2004, while the NYSE/Amex median maximum dollar loss was 17 percent lower.
- The total disclosure dollar loss for NYSE/Amex firms in 2005 was $72 billion compared to $26 billion for Nasdaq firms.
- The midpoint (median) disclosure dollar loss for NYSE/Amex firms in 2005 was $301 million compared to $118 million for Nasdaq firms. These numbers for Nasdaq are 59 percent higher than the average values for 1996–2004, while the NYSE/Amex median disclosure dollar loss was 34 percent higher than the average for 1996–2004.

Filings by Exchange Listing

| | 2004 | | Average (1996 – 2004) | | 2005 | |
|---|---|---|---|---|---|---|
| | NYSE/Amex | Nasdaq | NYSE/Amex | Nasdaq | NYSE/Amex | Nasdaq |
| Class Action Filings | 86 | 104 | 71 | 98 | 77 | 84 |
| Filings per Issuer | 2.48% | 3.16% | 1.96% | 2.21% | 2.16% | 2.63% |
| Maximum Dollar Loss | | | | | | |
| Total ($ Billions) | $622 | $106 | $430 | $279 | $387 | $61 |
| Average ($ Billions) | $8.1 | $1.0 | $5.8 | $2.8 | $5.5 | $0.7 |
| Median ($ Billions) | $0.8 | $0.4 | $1.2 | $0.4 | $1.0 | $0.4 |
| Disclosure Dollar Loss | | | | | | |
| Total ($ Millions) | $120,274 | $23,619 | $89,355 | $35,487 | $72,054 | $26,017 |
| Average ($ Millions) | $1,562 | $234 | $1,309 | $349 | $1,029 | $317 |
| Median ($ Millions) | $312 | $76 | $224 | $74 | $301 | $118 |

Exhibit 11

NYSE/Amex 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 as there were against companies listed on the NYSE/Amex (110 to 56). Also in 2001, the total maximum dollar loss for Nasdaq firms was $1,130 billion versus $345 billion for NYSE/Amex firms. The total disclosure dollar loss for Nasdaq firms was $118 billion versus the $79 billion for NYSE/Amex firms.

6 15 case filings in 2005 and 23 case filings in 2004 were for companies not listed on the NYSE, Amex, or Nasdaq.

## Circuit[7]



In terms of the number of 2005 filings, the top three circuits were the Second Circuit (New York) with 44 filings, Ninth Circuit (California) with 38 filings, and Third Circuit (Delaware/Pennsylvania) with 18 filings (see Exhibit 12). The top circuits in number of filings in 2004 were the Ninth Circuit with 64 filings, Second Circuit with 47 filings, and Third Circuit with 20 filings.

From 1996–2004, the Ninth Circuit had the greatest average number of class action filings with 51 per year. This is 31 percent higher than the next highest average number of class action filings (the Second Circuit with 39). Many Ninth Circuit 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 the Ninth Circuit in 2002 and 2003 after the decline of the Nasdaq stock market, where most of these companies traded. In 2004, there was a resurgence of filing activity in the Ninth Circuit, many of which were against technology companies, especially software companies. More than half of the filings in the Technology sector were filed in the Ninth Circuit. In 2005, there was again a decline in filings in the Ninth Circuit, with many fewer filings related to technology and Internet-related companies.

Exhibit 12

**Filings by Court Circuit**
*Dollars in Billions*

| | Class Actions Filings | | | Maximum Dollar Loss | | | Disclosure Dollar Loss | | |
|---|---|---|---|---|---|---|---|---|---|
| Circuit | 2004 | Average 1996 – 2004 | 2005 | 2004 | Average 1996 – 2004 | 2005 | 2004 | Average 1996 – 2004 | 2005 |
| 1 | 7 | 11 | 10 | $3 | $21 | $63 | $1 | $6 | $17 |
| 2 | 47 | 39 | 44 | $341 | $203 | $253 | $80 | $27 | $38 |
| 3 | 20 | 17 | 18 | $142 | $88 | $25 | $23 | $25 | $10 |
| 4 | 7 | 7 | 8 | $7 | $19 | $6 | $3 | $3 | $3 |
| 5 | 17 | 16 | 12 | $38 | $56 | $4 | $3 | $11 | $1 |
| 6 | 5 | 10 | 10 | $13 | $43 | $11 | $8 | $10 | $4 |
| 7 | 13 | 10 | 9 | $44 | $29 | $16 | $4 | $6 | $4 |
| 8 | 7 | 8 | 11 | $6 | $11 | $7 | $2 | $3 | $3 |
| 9 | 64 | 51 | 38 | $115 | $201 | $29 | $14 | $23 | $9 |
| 10 | 5 | 6 | 8 | $1 | $15 | $7 | $0 | $3 | $2 |
| 11 | 19 | 20 | 7 | $7 | $29 | $35 | $1 | $6 | $8 |
| 12 | 2 | 1 | 1 | $25 | $13 | $1 | $8 | $3 | $0 |
| Total | 213 | 195 | 176 | $742 | $727 | $456 | $147 | $127 | $99 |

When the circuits are ranked by maximum dollar loss, the top three circuits in 2005 were the Second Circuit with $253 billion, the First Circuit (Massachusetts) with $63 billion, and the Eleventh Circuit (Florida/Georgia/Alabama) with $35 billion. The Ninth Circuit with maximum dollar loss of $29 billion did not make it to the list of top three circuits by maximum dollar loss in 2005. The Second Circuit filings in 2005 were dominated by four of the top five maximum dollar loss "mega" filings, while the Eleventh Circuit contributed the other one. The top three circuits in maximum dollar loss in 2004 were the Second Circuit with $341 billion, the Third Circuit with $142 billion, and the Ninth Circuit with $115 billion. The Second Circuit contributed two cases to the list of the of the top five maximum dollar loss "mega" filings. Historically, the Second, Third, and Ninth Circuits have experienced the largest maximum dollar losses.

The circuits with the highest levels of disclosure dollar loss in 2005 were the Second Circuit with $38 billion, the First Circuit with $17 billion, and the Third Circuit with $10 billion. Again, the Ninth Circuit, with disclosure dollar loss of $9 billion, did not make it to the list of top three circuits by disclosure dollar loss in 2005. The largest disclosure loss "mega" filing in 2005 occurred in the Second Circuit. The circuits with the highest levels of disclosure dollar loss in 2004 were the Second Circuit with $80 billion, the Third Circuit with $23 billion, and the Ninth Circuit with $14 billion. The Second Circuit filings in 2004 were dominated by three of the top five disclosure dollar loss "mega" filings. Historically, the Second, Third and Ninth Circuits have had the largest disclosure dollar losses.

7 Circuit information corresponds to first identified complaint.

## Industry[8]



In 2005, the three sectors with the highest number of filings were Consumer Non-Cyclical, Consumer Cyclical, and Finance.[9] From 1996–2004, Consumer Non-Cyclical and Communications had the highest average number of filings with 44 and 39 filings per year, respectively. The lowest numbers of filings were in Basic Materials, Utilities, and Energy during the same period. In 2005 compared to 2004, filings in Technology and Communications were down 32 percent compared to a 10 percent decline in filings in other sectors. Filings in these two sectors were down 36 percent compared to historical averages and represented only 26 percent of all filings in 2005 compared to 53 percent in 2001.

Consumer Non-Cyclical, Finance, and Technology had the highest maximum dollar losses in 2005. During 1996–2004, Communications (which includes, under Bloomberg's classification, most Internet-related companies) was the biggest contributor to the MDL Index™. Filings in Consumer Non-Cyclical and Technology were a distant second and third in terms of maximum dollar losses. In 2005 compared to 2004, maximum dollar losses in Technology and Communications were down 63 percent compared to a 31 percent decline in maximum dollar losses in other sectors. These two sectors represented only 14 percent of total maximum dollar loss in 2005 compared to 78 percent in 2001.

Consumer Non-Cyclical, Finance, and Technology had the highest disclosure dollar losses in 2005. Consumer Non-Cyclical was the highest contributor with $44 billion in disclosure dollar loss. Interestingly, this sector also had the biggest contribution to the disclosure dollar loss in six out of ten years since the adoption of PSLRA. Filings in Consumer Non-Cyclical and Communications represented the greatest disclosure dollar losses during 1996–2004, while filings in Technology were a distant third in terms of disclosure dollar losses. In 2005 compared to 2004, disclosure dollar losses in Technology and Communications were down 49 percent compared to a 26 percent decline in disclosure dollar losses in other sectors. These two sectors represented only 22 percent of total maximum dollar loss in 2005 compared to 73 percent in 2001.

Exhibit 13

### Filings by Industry

| | Class Actions Filings | | | Maximum Dollar Loss | | | Disclosure Dollar Loss | | |
|---|---|---|---|---|---|---|---|---|---|
| Industry | 2004 | Average 1996 – 2004 | 2005 | 2004 | Average 1996 – 2004 | 2005 | 2004 | Average 1996 – 2004 | 2005 |
| Consumer Non-Cyclical | 58 | 44 | 49 | $163 | $129 | $196 | $29 | $35 | $44 |
| Technology | 36 | 33 | 20 | $95 | $102 | $49 | $11 | $19 | $18 |
| Communications | 32 | 39 | 26 | $81 | $272 | $17 | $32 | $32 | $4 |
| Finance | 28 | 24 | 27 | $192 | $88 | $124 | $47 | $16 | $18 |
| Industrial | 25 | 19 | 13 | $12 | $33 | $15 | $4 | $10 | $4 |
| Consumer Cyclical | 20 | 24 | 33 | $96 | $56 | $46 | $7 | $8 | $9 |
| Energy | 8 | 5 | 4 | $101 | $26 | $1 | $17 | $4 | $0 |
| Utilities | 4 | 4 | 1 | $2 | $17 | $0 | $1 | $2 | $0 |
| Basic Materials | 2 | 3 | 3 | $1 | $5 | $7 | $0 | $1 | $1 |
| Total | 213 | 195 | 176 | $742 | $727 | $456 | $147 | $127 | $99 |

8 For the purposes of this analysis, we use the sector classifications provided by Bloomberg. According to Bloomberg, "sector" is the broadest classification that represents the 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.

9 Consumer Cyclical includes airlines, apparel, auto manufacturers, auto parts and equipment, distribution/wholesale, entertainment, food service, home builders, home furnishings, housewares, leisure time, lodging, office furnishings, retail and storage/warehousing. Consumer Non-Cyclical includes agriculture, beverages, biotechnology, commercial services, cosmetics/personal care, food, healthcare-products, healthcare-services, household products/wares, and pharmaceuticals.

## New Developments



### The Dura Pharmaceuticals Decision

In April 2005, the Supreme Court ruled that plaintiffs in a securities class action case are required to establish a causal connection between alleged wrongdoing and subsequent shareholder losses. Plaintiffs therefore cannot merely allege that a stock price was inflated by fraud at the time they purchased their shares. Instead, they must allege and prove that the losses they ultimately suffered were caused by the fraud and not by other intervening factors, such as a general decline in the stock market, or a sector specific stock price decline. The Supreme Court's decision reversed a holding by the Ninth Circuit Court of Appeals that, had it survived review, could have materially increased the volume of securities fraud litigation by allowing plaintiffs to file weaker claims alleging only a remote connection to the plaintiff's actual losses. The decision in *Dura* also clearly calls into question plaintiff-style damage calculations that seek to measure damages as the simple difference between inflation at the time of purchase and inflation as of the date of the corrective disclosure without taking into account the influence of other non-fraud factors on the issuer's stock price. *Dura* thereby also underscores the value of careful economic analysis in identifying the portions of a stock price decline that are caused by factors other than the fraud and that therefore cannot support the award of damages.

### WorldCom and Enron Settlements

As will be discussed more fully in Cornerstone Research's upcoming 2005 report on securities case settlements, 2005 witnessed two of history's largest and most controversial securities fraud settlements. The total settlement fund in the WorldCom matter has reached over $6.1 billion, while the total settlement fund in the Enron matter has reached approximately $7.1 billion.[10] These settlements reflect payments by a large number of defendants, most notably the underwriters of certain bonds issued by the defendant firms. In addition, the settlements gained broad notoriety by including payments by outside directors where the directors were precluded from seeking insurance or indemnification to cover their losses. The settlements are thus historic both for their magnitude and for the fact that they represent a very rare instance in which outside directors were held personally liable for a securities fraud.

Moreover, in the WorldCom matter a number of institutional investors decided to proceed with individual claims against WorldCom and its underwriters rather than participate in the larger class action proceeding. These individual claimants recovered more than $650 million during 2005, a set of recoveries that touched off a heated debate among plaintiffs' counsel as to which settlements had achieved a higher recovery rate for their plaintiffs.[11]

The implications of these individual proceedings are potentially quite profound if they presage a broader trend toward larger claimants opting out of class action securities fraud proceedings. The management and settlement of class action securities fraud exposure could be made far more complex if defendants are required simultaneously to defend the class action and a portfolio of individual actions brought by sophisticated plaintiffs alleging significant liability.

[10] Includes amounts not yet approved by the court.

[11] "Class Action And 'Opt Out' Lawyers Duke It Out", *Compliance Week*, November 8, 2005.

## Classification of Complaints



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. A comparison of Traditional class action cases filed in 2005 with those in 2004 reveals similarities and differences in the types of allegations in class action complaints during these two years.

- In line with historical trends, the majority of cases filed in 2005 (163 cases or 93 percent) involved Section 10b-5 claims. Section 11 claims (16 cases or 9 percent) and Section 12(2) claims (9 cases or 5 percent) occurred less frequently.[12]
- There were marked increases in the percentage of filings that alleged misrepresentations in financial documents and false forward-looking statements. The percentage of filings alleging misrepresentations in financial documents increased from 78 percent in 2004 to 89 percent in 2005. Similarly, the percentage of filings alleging false forward-looking statements increased from 67 percent in 2004 to 82 percent in 2005. This trend suggests that the litigation market is now even more focused on the validity of financial results and forecasts presented in financial documents, such as SEC filings and press releases.
- Auditors and underwriters were named as defendants in only a small percentage of filings in both 2005 and 2004. In 2005, auditors were named as defendants in only 5 cases (3 percent), while underwriters were named in 7 cases (4 percent). In comparison, in 2004, auditors were named as defendants in 8 cases (4 percent), and underwriters were named in 3 cases (1 percent).
- Plaintiffs alleged that defendants used their "insider" information to benefit from trades of the company's common stock in 79 cases (45 percent) filed in 2005, compared to 83 cases (39 percent) in 2004.
- 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 2005 as they did in 2004. The overall number of complaints alleging specific GAAP violations declined slightly to 78 (44 percent) in 2005 from 105 (49 percent) in 2004. Excluding the broad "other" category, the order of the three most-frequently mentioned accounting irregularities was largely unchanged from 2004 to 2005. In 2005, the three most-commonly mentioned accounting allegations remained revenue recognition (40 cases or 51 percent), overstatement of accounts receivable (17 cases or 22 percent), and understatement of liabilities (14 cases or 18 percent).
- More lawsuits were filed subsequent to bankruptcies in 2005 than in 2004. During 2004, 4 class action lawsuits out of 213 (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 2005, however, companies sued in 8 out of 176 lawsuits (5 percent) had claimed bankruptcy by the time the complaints were filed. Subsequent to the filing of a lawsuit, 4 additional companies filed for bankruptcy during 2005.

[12] Some filings are included in multiple classifications.

## Classification of Complaints *continued*



Allegations Box Score

| | 2004 Number | 2004 Percentage of total filings | 2005 Number | 2005 Percentage of total filings |
|---|---|---|---|---|
| **General Characteristics** | | | | |
| 10b-5 claims | 185 | 87% | 163 | 93% |
| Section 11 claims | 12 | 6% | 16 | 9% |
| Section 12(2) claims | 9 | 4% | 9 | 5% |
| Auditor defendant | 8 | 4% | 5 | 3% |
| Underwriter defendant | 3 | 1% | 7 | 4% |
| **Allegations** | | | | |
| Misrepresentations in financial documents | 166 | 78% | 156 | 89% |
| False forward looking statements | 142 | 67% | 145 | 82% |
| GAAP violations | 105 | 49% | 78 | 44% |
| Insider trading | 83 | 39% | 79 | 45% |

| | 2004 Number | 2004 Percentage of cases with alleged GAAP violations | 2005 Number | 2005 Percentage of cases with alleged GAAP violations |
|---|---|---|---|---|
| **Specifics of Accounting Allegations** | | | | |
| Revenue recognition | 61 | 58% | 40 | 51% |
| Overstatement of accounts receivable | 17 | 16% | 17 | 22% |
| Understatement of liabilities | 15 | 14% | 14 | 18% |
| Overstatement of inventory | 5 | 5% | 11 | 14% |
| Overstatement of other assets [1] | 15 | 14% | 9 | 12% |
| Estimates | 4 | 4% | 8 | 10% |
| Derivatives/hedging | 1 | 1% | 6 | 8% |
| Acquisition accounting | 4 | 4% | 5 | 6% |
| Non-recurring items | 0 | 0% | 4 | 5% |
| Other | 10 | 10% | 27 | 35% |

[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: 2004: A Year in Review

Post-Reform Act Securities Settlements: Updated Through December 2004
*by Laura E. Simmons and Ellen M. Ryan*

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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