



FEBRUARY 2011

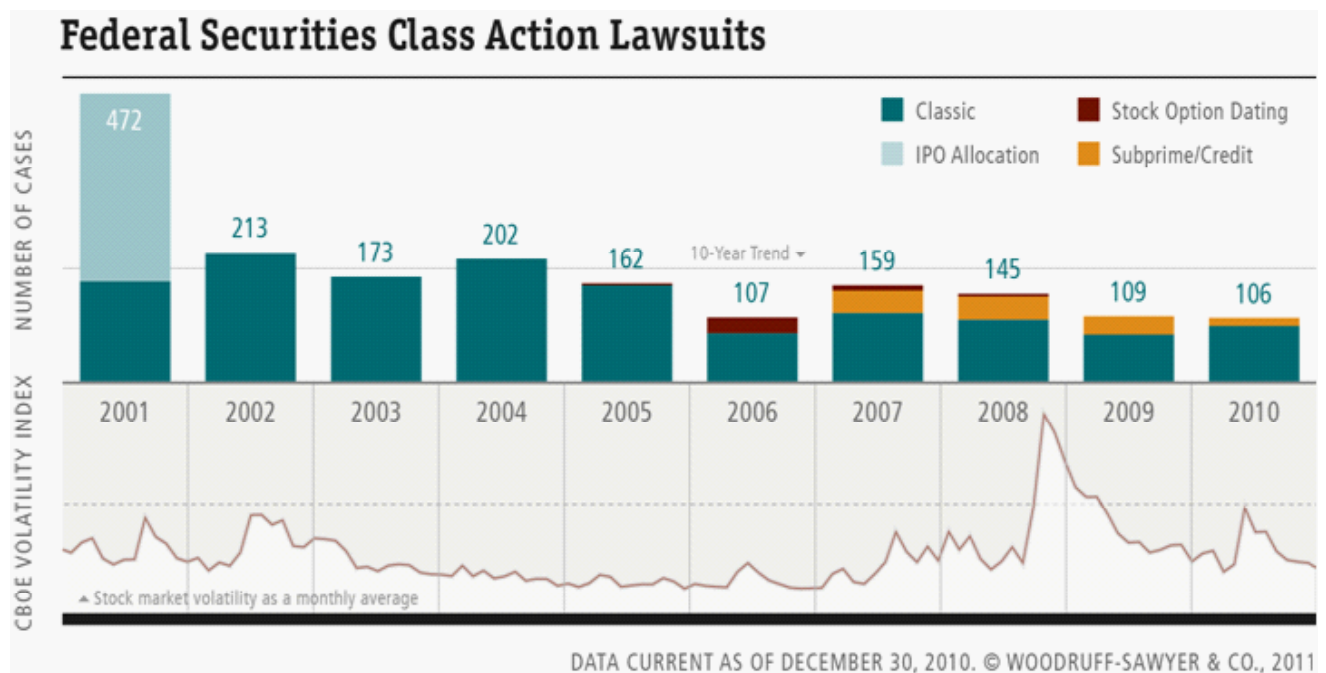
D&O DATABOX – SECURITIES CLASS ACTION YEAR-END REPORT (AS OF DECEMBER 31, 2010)

Woodruff-Sawyer & Co. is pleased to present the latest information concerning securities litigation filed against public companies in the United States. The information below comes from the D&O Databox as of December 31, 2010. The D&O Databox tracks litigation filed against public company issuers and their directors and officers.¹ Settlement figures include amounts paid by issuers, their directors and officers, and their insurance carriers. Settlement figures exclude amounts paid in settlement by third party defendants.

LOOKING BACK AT 2010

Total Cases Filed

2010 ended with a total of 106 securities class action cases filed for an average of 125 cases filed in the past five-year period -- a period that was dominated by the subprime mortgage crises and stock option backdating scandals -- as compared to an average of 154 cases filed in the previous five-year period where the impact of the bursting of the dot-com bubble and implementation of SOX legislation took effect (excluding IPO allocation cases).

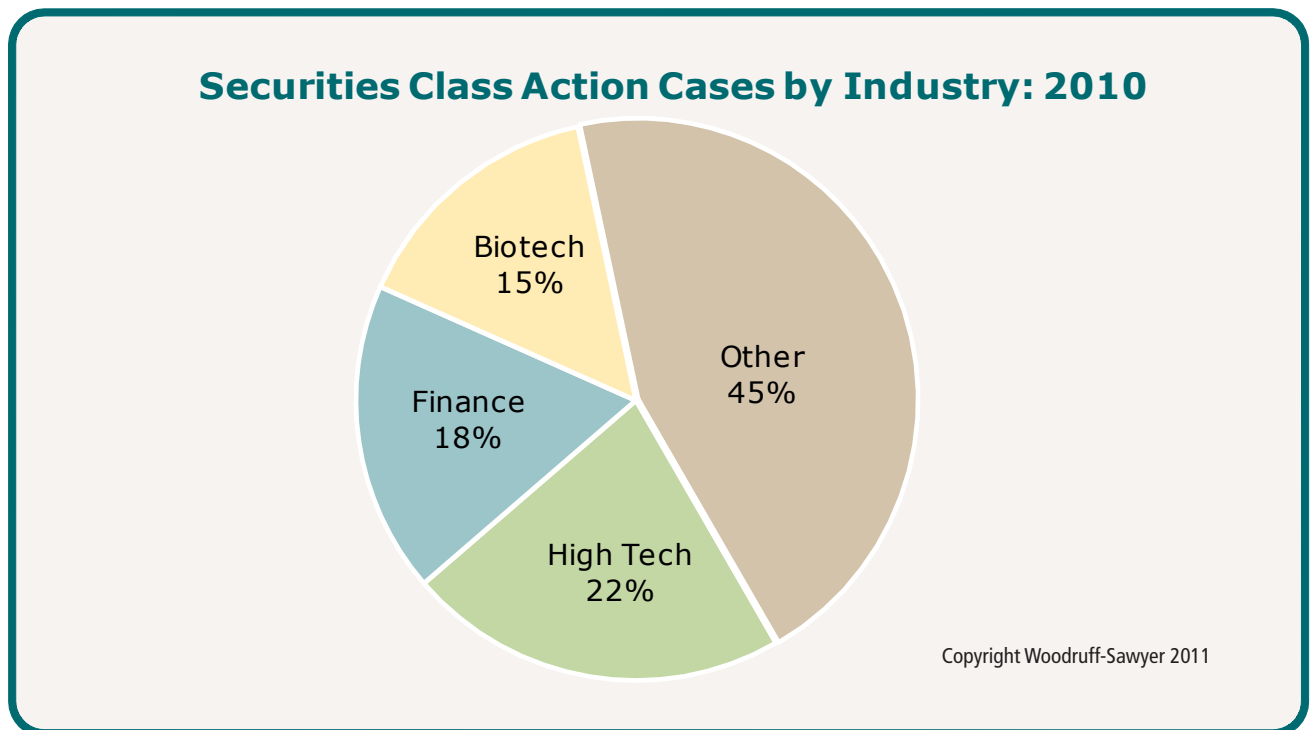


¹ For purposes of tracking issuer-related securities litigation, the D&O Databox focuses exclusively on securities class action lawsuits filed in federal courts against public companies by holders of common or preferred stock.



By Industry

As the credit crisis abated, filings in the Finance sector decreased and the breakdown among industry sectors was as follows:



Observations about 2010 filings:

- **Finance** - In 2009, lawsuits against large globally recognized financial institutions were the focus of the plaintiffs' bar. In 2010 over half of the cases filed involved smaller regional banks that were impacted by the effects of impaired loans, particularly in the commercial real estate market.
- **Biotechnology** - There was an increase in the number of cases filed against biotech companies last year as compared to the previous five years. Biotech cases averaged 11.3% of all cases over the past five years. In 2010 biotech cases represented 15% of all cases. Not surprisingly, over two-thirds of these cases were related to clinical trial failures or product efficacy issues while the remaining suits were tied to financial, accounting or fraud issues.
- **High Technology** – There has been a decline in the number of high tech companies sued over the past five years. 44% of the companies sued in 2006 were high technology companies as compared to 22% in 2010. The average number of lawsuits filed against high tech companies in the last ten years was 35%. Various factors such as the significant decrease in public offering activities and the incorporation of the accounting and corporate governance mandates imposed by SOX (legislation that was enacted due in large part to several major corporate and accounting scandals of huge high tech companies such as Tyco, Adelphia, Peregrine Systems and Worldcom) have contributed to the decline. However, the high tech industry has consistently received the highest percentage of cases filed against a specific industry sector.
- **Other Industries** – 20% of the lawsuits filed were against for-profit education entities that were sued based on allegations stemming from a report issued by the Government Accountability Office that revealed fraudulent and deceptive high-pressure sales tactics to recruit students who were also encouraged to lie on applications for federal financial

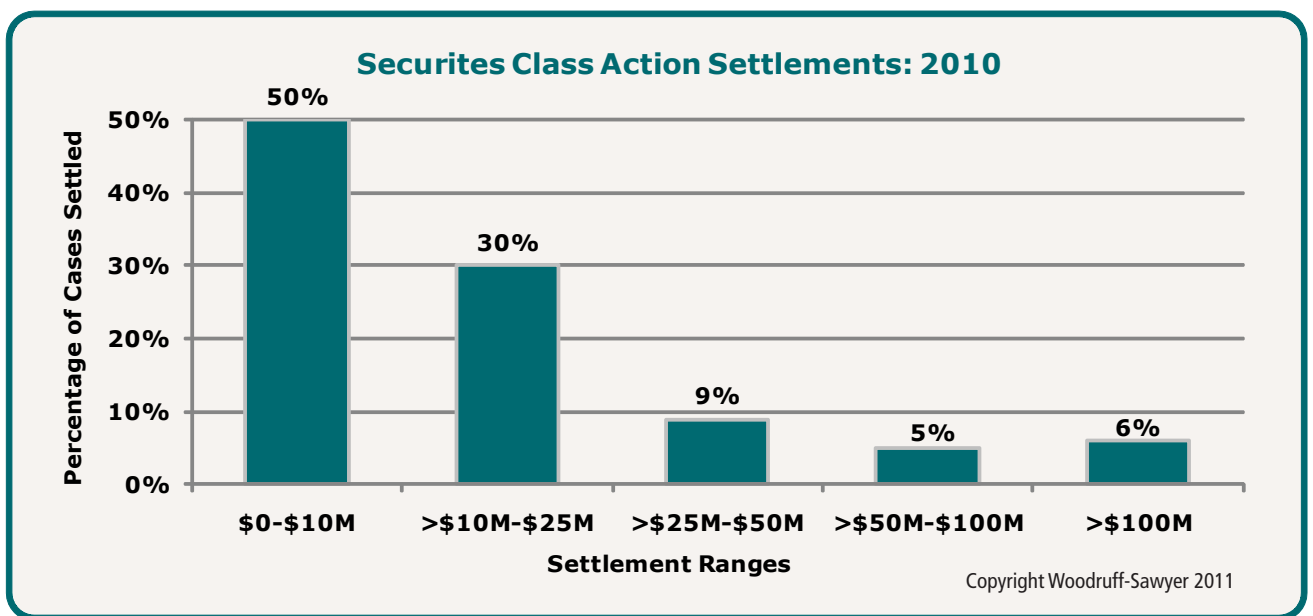


aid. The remaining 80% were spread across various industry sectors: Services (32%), Energy (16%), Manufacturing – Durable (16%), Manufacturing – Non-Durable (10%), Retail (4%), and Construction (2%).

- **Foreign Companies** – As China’s rapid economic growth has led to Chinese companies expanding their investor base by listing on U.S. stock exchanges, there has been an emergence of lawsuits filed against Chinese companies in 2010 (12% of the 106 cases filed – approximately 6% of the Chinese companies listed in the U.S.). Many small, high-growth companies with minimal revenues have entered the U.S. stock markets via a “reverse takeover” of a dormant U.S. company and, although the shell company is based in the U.S., the core of the business and its revenues are located in and generated in China. Research and news reports about questionable accounting and financial reporting have led to shareholder lawsuits and a full scale investigation by the SEC.

SETTLEMENTS

Sixty-six cases settled in 2010 for an aggregate amount of approximately \$2.0 billion (excluding third party defendants), such cases settling in the following cash payment ranges:



In the last 10-year period, 83% of all settlements have settled for \$25M and under, with 2010 settlements tracking close to this percentage. The 2010 median and average settlements were:

- Median settlement: \$10.3M (as compared to a 10-year median of \$6.9M and a 5-year median of \$8.2M). Over two-thirds of all settlements in the last 10-year period have settled for \$10M and under.
- Average settlement: \$30.4M (as compared to a 10-year average of \$26.8M and a 5-year average of \$32.4M – excluding three cash settlements over \$1.0B).



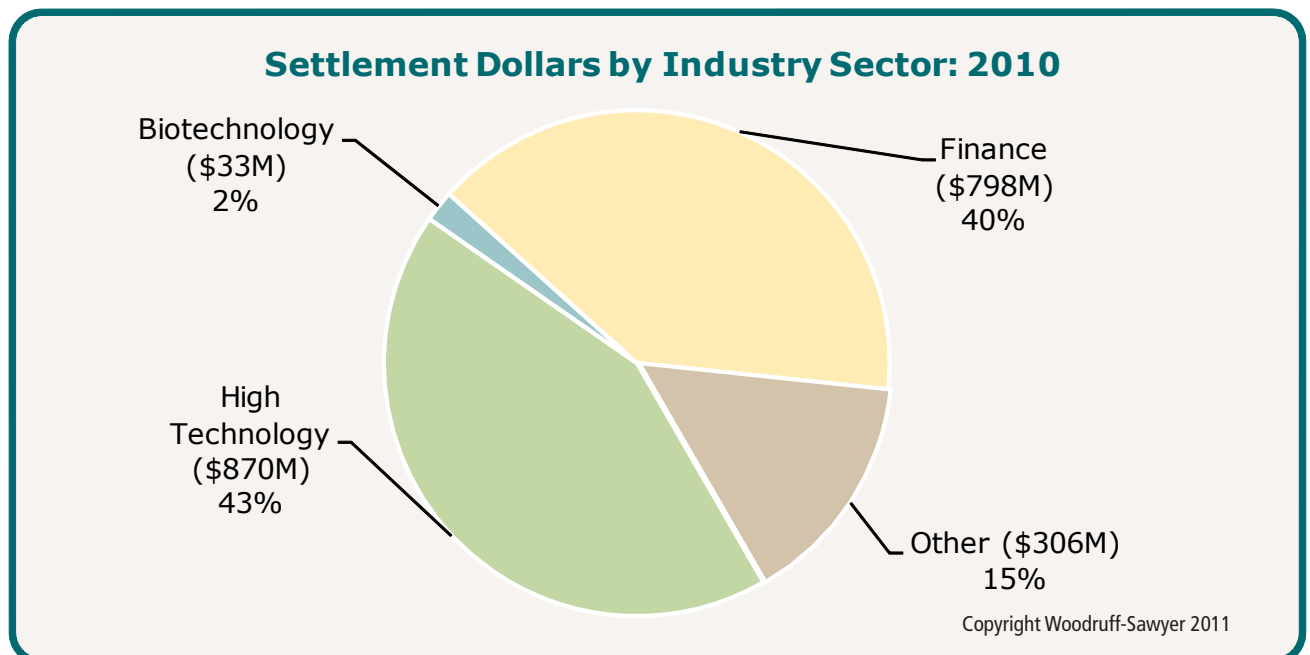
The top ten settlements of 2010* were:

Issuer	Suit Date	Settlement	Comments
Countrywide Financial Corp.	8/14/07	\$600.0M	Subprime mortgage problems
Maxim Integrated Products, Inc.	2/05/08	\$173.0M	Stock option backdating
Juniper Networks, Inc.	7/14/06	\$169.0M	Stock option backdating
Broadcom Corporation	8/13/06	\$160.5M	Stock option backdating
Moneygram International, Inc.	3/28/08	\$80.0M	Subprime mortgage problems
Tycom Ltd.	7/24/03	\$79.0M	IPO misrepresentations
New Century Financial Corp.	2/08/07	\$65.1M	Subprime mortgage problems
Micron Technology Corp.	2/24/06	\$42.0M	Illegal price-fixing
Conseco, Inc.	8/28/02	\$41.5M	Liquidity problems
PMI Group, Inc.	3/12/08	\$31.3M	Subprime mortgage problems

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* AIG has tentatively agreed to a settlement of \$725.0 million on a case filed in 2004 related to illegal contingent commission agreements.

Breakdown of the settlement dollars by industry sector is as follows:





DISMISSALS

43 cases were dismissed by the courts in 2010. They break down as follows:

By Year Filed	By Industry
• 27% cases for 2009 lawsuits	• 37% - Financial Institutions
• 47% cases for 2008 lawsuits	• 30% - All Other Industries
• 14% cases for 2007 lawsuits	• 28% - High Technology
• 16% cases for lawsuits filed 2001 thru 2006	• 5% - Biotechnology

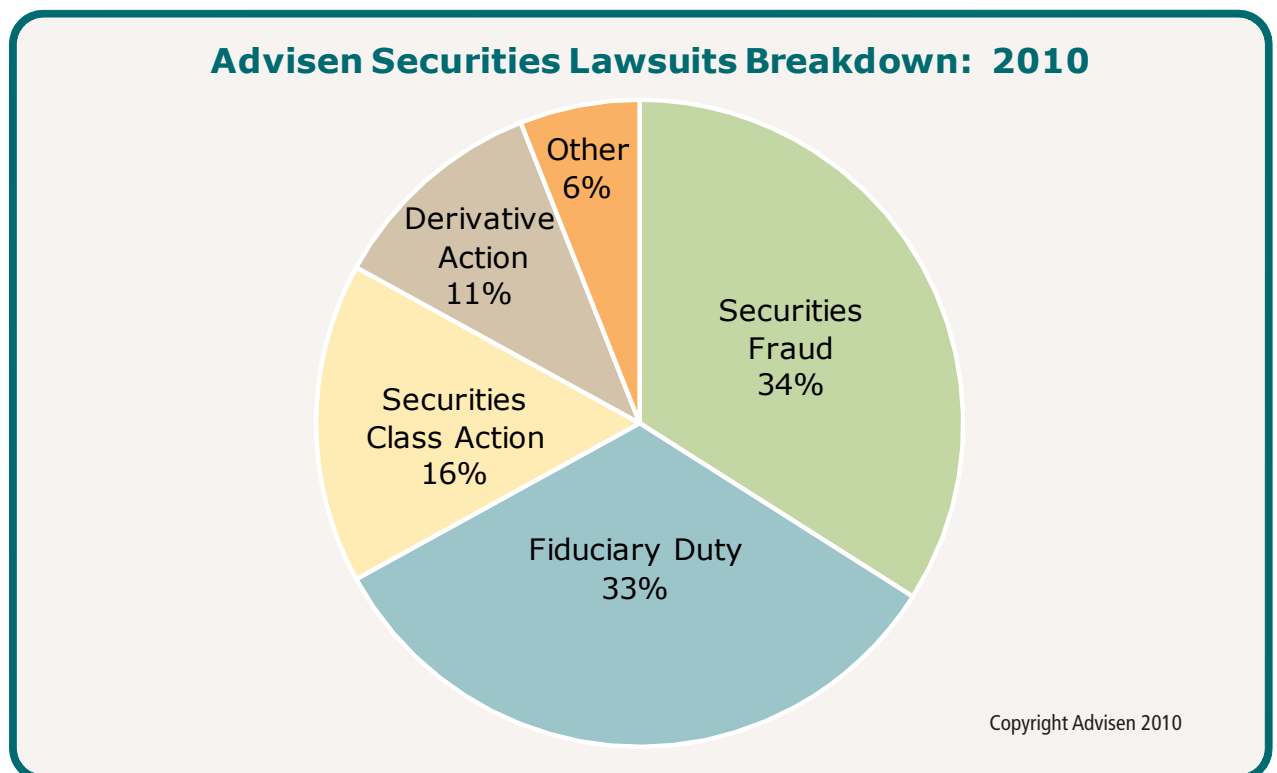
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A Note about Subprime Cases:

Although there has been a rise in the dismissal of subprime-related cases against financial institutions in 2010 (13% in 2010 versus 6% in 2009), 63% of all subprime-related cases have yet to be resolved and 13% have settled for an aggregate amount of \$1.4 billion.

THE BIG PICTURE

Securities class action lawsuits by far pose the largest insurable exposure for directors and officers of public companies. We are committed to keeping our focus on these lawsuits and all of the risks that directors and officers face in the many various venues and jurisdictions here in the U.S. and internationally. Advisen, an aggregator of information for insurance professionals, has captured the distribution of various types of D&O related litigation for 2010 in the following way²:



² "2010 a Record Year for Securities Litigation," An Advisen Quarterly Report – 2010 Review, page 3 (Advisen 2010), http://corner.advisen.com/reports_topical_sec_lit_q42010_blurb.html.



Mergers and Acquisitions Lead to . . .

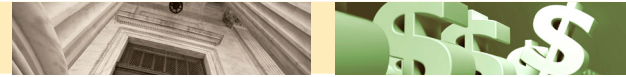
Outside of the securities class action arena, there has been a dramatic increase in breach of fiduciary duty lawsuits being filed against companies that are being acquired. As reported recently in *The Wall Street Journal*, there were 216 such lawsuits filed through October 2010 (over 250 cases filed for 2010) as compared to an average of 27 cases filed in the previous three years. While most of these lawsuits do not yield cash settlements for individual plaintiffs (shareholders), the suits are clearly a source of revenue for plaintiffs' law firms that receive payment for their legal fees as part of a settlement. It's a hold-up problem: the company trying to sell itself will, in most cases, feel tremendous pressure to resolve even the most non-meritorious of suits brought against it in order to focus its efforts on closing the proposed deal. While there may be some merit in filing these lawsuits in order to ensure that the shareholders are receiving a fair deal in the merger, the Delaware Chancery Court has expressed skepticism as to the necessity of these suits. Nevertheless, any public company that is currently considering engaging in acquisition discussions will certainly need to factor in the likelihood that they will be the target of a breach of fiduciary suit which will, at the least, create additional legal expenses and, in some instances, a cash settlement.

The Heat is on . . .

As the subprime and credit crises unfolded and led to deep concerns about the U.S. economy, the Securities and Exchange Commission went through various organizational changes to step up and streamline investigations and is currently grappling with the implementation of the Dodd-Frank Act, the largest piece of financial reform legislation enacted since the original U.S. securities laws were put into place in the 1930's. For example, the SEC's Division of Enforcement has adopted initiatives to encourage cooperation of defendants by entering into non-prosecution or deferred prosecution agreements. As noted in a recent Cornerstone seminar conducted by Professor Grundfest, the W.A. Franke Professor of Law and Business at Stanford Law School, this type of agreement may have a far-reaching impact on a defendant and needs to be carefully reviewed in light of other possible circumstances that may impact a defendant such as a securities class action lawsuit or its possible interplay with the Dodd-Frank Act, particularly given the expanded incentives that will be offered to whistleblowers in securities, accounting fraud and bribery allegations. The introduction of the non-prosecution agreement by the SEC is similar to the DOJ's methods and, in fact, SEC rule changes in 2010 have now streamlined the process for these two departments to effectively work together in their joint investigations.

Further to the subject of increased activity by government agencies, a recent article published in *The New York Times* indicated that the FDIC had authorized lawsuits against 109 individuals for D&O liability (now 119 as of mid-January 2011 with damage claims of approximately \$2.5 billion). These lawsuits are filed after investigations usually spanning an 18-month period are completed and settlements with the responsible parties of the failed financial institution cannot be reached. Allegations of gross or simple negligence are being asserted in which failed banks were found to have implemented unsustainable business models in the pursuit of rapid asset growth which were concentrated in high-risk loans in commercial and residential real estate and had inadequate policies in place to manage the risk. With over 150 bank failures in 2010 and 140 in 2009, the FDIC has made it a priority to recover losses incurred through its insurance fund in which they expect to amount to approximately \$50 billion over the period of 2010 thru 2014.

The heightened scrutiny by government agencies into alleged bad conduct of companies and their directors and officers shows no signs of tapering or leveling off. There continues to be an upward trend for investigations and prosecutions. The SEC continues to vigorously prosecute FCPA violations and countries such as the U.K. has followed the U.S.'s lead by enacting *The UK Bribery Act 2010* that is now considered to be the toughest anticorruption legislation in the world. Also, the Dodd-Frank Act requires that the SEC adopt regulations for the whistleblower program which provides financial incentives and enhanced protections for whistleblowers by April 2011 and which will certainly increase enforcement activity.



And Let's Not Forget The Supreme Court . . .

In our Second Quarter 2010 Flash Report, we referred to the decision handed down by the Supreme Court in which foreign plaintiffs who purchased shares on foreign exchanges were precluded from U.S. securities class action lawsuits (*Morrison v. National Australia Bank*) and the impact it would have on pending "foreign-cubed" or "f-cubed" cases. A subsequent ruling in the Southern District of New York federal court on the Credit Suisse Group class action case has also precluded U.S. stockholders who bought their shares of foreign companies on foreign exchanges ("foreign-squared" or "f-squared" cases) thereby casting a wider net over plaintiffs being affected by the *Morrison* decision.

While the *Morrison* decision is a victory for defendants, another ruling by the Supreme Court in 2010 proved to be helpful to the plaintiffs. The *Merck v. Reynolds* decision involved a case in which investors lost millions on their investment in Merck & Company when the huge-selling drug Vioxx was withdrawn from the market. The allegation of whether Merck had provided adequate information about the painkiller's risks before it was withdrawn from the market became a central issue to the tolling of the statute of limitations for this case. The Supreme Court essentially affirmed the Third Circuit's opinion that events that occurred years prior to the withdrawal of the drug did not suggest scienter and thus did not trigger the running of the statute of limitations, allowing for the reversal of the district court's dismissal of the case. Along these lines, as we noted in our Fourth Quarter 2009 Flash Report, plaintiffs firms were taking longer to file their cases - in 2009, 40% of the cases were filed beyond the typical six-month period for which the previous 10-year average was approximately 20%. This ruling may assist the courts in dealing with these late-filing cases as it relates to discovery of facts and timing issues and may give plaintiffs cause to file more belated suits.

There are two cases on which Supreme Court is scheduled to render decisions upon in 2011: *Matrixx Initiatives, Inc. v. Siracusa* and *Haliburton Co. v. Erica P. John Fund, Inc.* We will be awaiting their rulings as they could have significant implications for the securities class action environment.

ABOUT THE D&O DATABOX

D&O Databox is Woodruff-Sawyer & Co.'s proprietary director and officer litigation database. Included within the D&O Databox is information concerning every securities class action lawsuit filed against public company directors and officers since 1988. Woodruff-Sawyer uses the D&O Databox to help its client model their D&O litigation-related risk. For questions about the D&O Databox, please contact Donna Moser (dmoser@wsandco.com or 415.402.6526).

Woodruff-Sawyer is one of the largest independent insurance brokerage firms in the nation, and is an active partner of International Benefits Network and Assurex Global. For over 90 years, Woodruff-Sawyer has been partnering with clients to implement and manage cost-effective and innovative insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Portland, Oregon.

For more information, call 415.391.2141 or visit www.wsandco.com.