

November 2013

DATABOX™

THIRD QUARTER SECURITIES CLASS ACTION REPORT

As of September 30, 2013

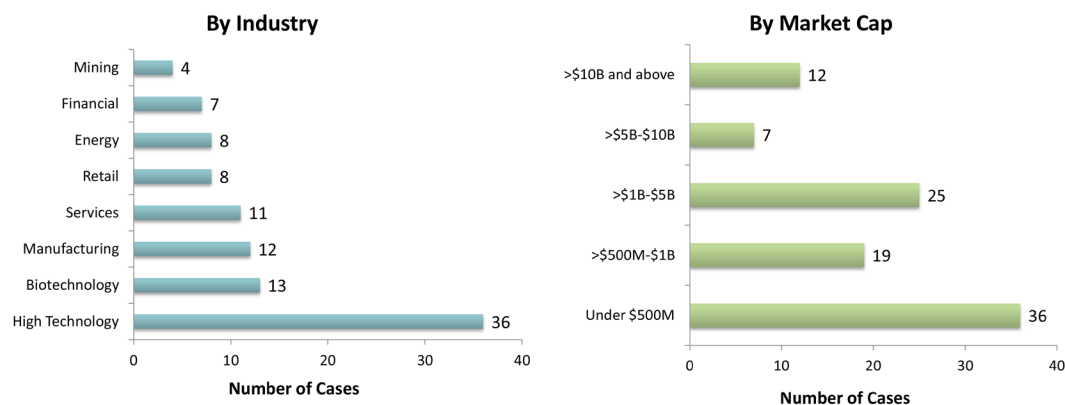
Woodruff-Sawyer & Co. is pleased to present the latest information concerning securities litigation filed against public companies in the United States. The information below comes from DATABOX™ as of September 30, 2013. The DATABOX™ tracks securities class action litigation filed against public company issuers and their directors and officers.¹

SECURITIES CLASS ACTION CASES

New Cases

Activity was up by a third in Q32013 as compared to the previous two quarters (42 cases vs. 28 and 29 cases in Q1 and Q2, respectively) for a total of 99 cases filed through Q32013. However, this upswing does not signal that a notable trend in securities class action filings is in the making. We anticipate that total filings per year will be on par with 2012 at around 125 cases (127 cases were filed in 2012). There are no indicators pointing to a frenzy of activity in the last quarter, but if filing activity continues at last quarter's level, filings could reach 140 cases by the end of the year. There were only two instances in the last five years in which filings were in the 140-150 range. One was due to the subprime mortgage meltdown and the other was the result of Chinese reverse merger company issues.

Breakdown by industry and market cap are as follows:



The High Technology industry continues to lead the pack this year in filings, comprising over one-third of all cases with 55% of these companies with market capitalizations in the \$1B and less range. We continue to project what we noted in last quarter's Flash Report, namely that we expect approximately 40% of 2013's filings will have been brought against technology companies. In the last five years, filings against technology companies had dropped down to the 15-25% range. Now that the financial crisis has abated, it appears that the tide has turned back towards technology companies returning this sector to its normal 30-40% range.

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.

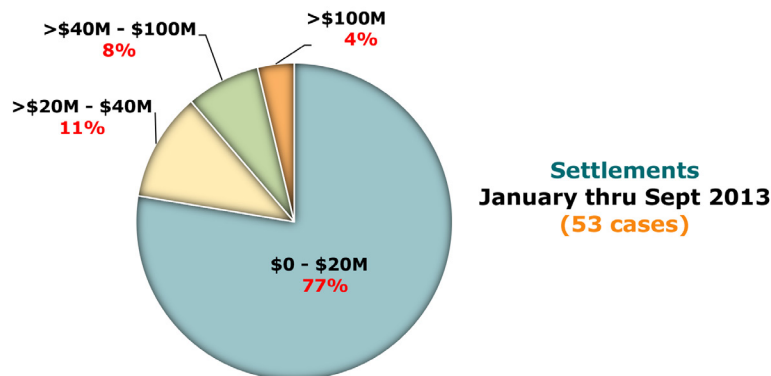


The top three allegations made in securities class action cases filed from January through September 2013 were:

- Accounting issues (42%);
- Misrepresentations made related to product matters (38%); and
- Misrepresentations about current and projected earnings (35%)

SETTLEMENTS

Of the 66 settlements totaling \$1.9 billion through September 2013, 53 of them were paid out by the company (and/or their insurers). The majority of these cases continue to settle in the lower end of the spectrum as brought out in the following table:



The top three settlements in the last quarter were by:

- **VeriFone Holdings, Inc.** for \$95M
 - Violation of GAAP – for overstatement of inventories and understating cost of revenues (2007 case)
- **The Blackstone Group L.P.** for \$85M
 - Misrepresentations in their IPO prospectus regarding the performance of certain portfolio companies (2008 case)
- **Sanofi-Aventis** for \$40M
 - Clinical trial failure of their weight loss drug (2007 case)

MERGER OBJECTION LAWSUITS

While we and others have reported that global M&A activity through mid-year 2013 has been down and that this is the sixth straight year of declining deal volumes, merger objection lawsuits continue at the pace of 2012 activity. 185 lawsuits were filed against 123 companies through September 2013 (as compared to 175 lawsuits filed against 113 companies through September 2012). The ratio of lawsuits filed against companies has not changed at approximately 1.5 cases per company. However, this ratio may increase if the total number of M&A deals shrink and plaintiffs' firms compete for the opportunity to litigate a case in different jurisdictions. As was discussed in the last quarter's Flash Report, a recent Delaware court ruling has given companies incentive to consider exclusive forum bylaw provisions as a potential roadblock for multiple filings against a particular allegation. This report can be found at the following link: [Second Quarter 2013 D&O Databox Flash Report](#).

²New York Times DealBook article dated July 8, 2013, "Pondering a Drought in Merger Deals"



SEC WHISTLEBLOWER AWARD

There has been a lot of press recently about the SEC's announcement on October 1 of its largest whistleblower award to date of \$14M. Since the inception of the SEC's Whistleblower Program in 2011 as mandated by the Dodd-Frank Act, there had been only two awards for payouts totaling less than \$200,000. This recent award to an anonymous whistleblower is being considered a harbinger of more, larger payouts to come. This bounty has been compared to a "large lottery jackpot" by [Jordan Thomas](#), a former SEC senior official who assisted in creating and developing the whistleblower law and its regulations, and who is now a partner at Labaton Sucharow LLP, a prominent plaintiffs' law firm, and is chairman of the firm's whistleblower practice.^{3,4} SEC investigations typically take between two and four years to complete. Having a whistleblower assist in an investigation can save the agency time and money on the discovery process allowing them to accelerate the enforcement process against companies and individuals engaging in misconduct. The importance of the whistleblowers to the SEC is borne out in comments made by both the heads of the SEC and the Office of the Whistleblower. In particular, in an interview on August 19, 2013 by Law360 with Chief Sean McKessey of the Office of the Whistleblower, the following question was asked just prior to the announcement of the \$14M award:

"The SEC has announced two whistleblower awards so far. Should the public expect more awards in the next few months?"

I hope so. They certainly can't come fast enough from my perspective. I share people's anxiousness about making additional payments. I'm not going to predict when or how soon we'll see another one, but logic tells you that if the statute was passed in July 2010, then the further we get from that date, the more opportunity we'll have for tips to ripen into successful actions.

I have said all along that I understand that my performance will be graded on a curve based on how many awards we're able to get out. There are other measures of the success of the program, but I understand why the public would say the success would be measured on awards. I don't shy away from that."

This large award is serving as a red flag for companies to review and strengthen their internal compliance and reporting programs. While most employees will likely report their concerns via internal programs, if companies do not foster environments where employees can report internally without fear of retaliation, the SEC's whistleblower program will serve as an added incentive for aggrieved employees to take their concerns outside of the company's hands for review.

DOES THE DODD-FRANK ACT PROTECT ALL WHISTLEBLOWERS?

A recent court ruling on the Dodd-Frank Whistleblower Anti-Retaliation Provision has narrowed the application of this provision. For more information on this subject, we direct you to the following blog post:

- [Whistleblower protections within U.S... but not outside](#)

We invite you to subscribe to our weekly blog as an additional resource for staying informed on current news and events as it pertains to directors and officers liability. [Priya Speaks: Directors & Officers Liability Blog](#) focuses on D&O liability insurance and corporate governance matters, including ways to reduce exposure to shareholder lawsuits and regulatory investigations.

³ *Corporate Crime Reporter Article dated September 1, 2011, "Jordan Thomas Sets Up SEC Whistleblower Shop at Labaton"*

⁴ *Law360 Article dated October 1, 2013, "\$14M SEC Whistleblower Award is Just The Beginning"*



- [Coverage for SEC Investigations](#)
- [D&O Databox: Focus on D&O Insurance Limits](#)
- [D&O Considerations for the Next Calendar Year](#)

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 Oregon.

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