

May 2014

DATABOX™

FIRST QUARTER SECURITIES CLASS ACTION REPORT

As of March 31, 2014

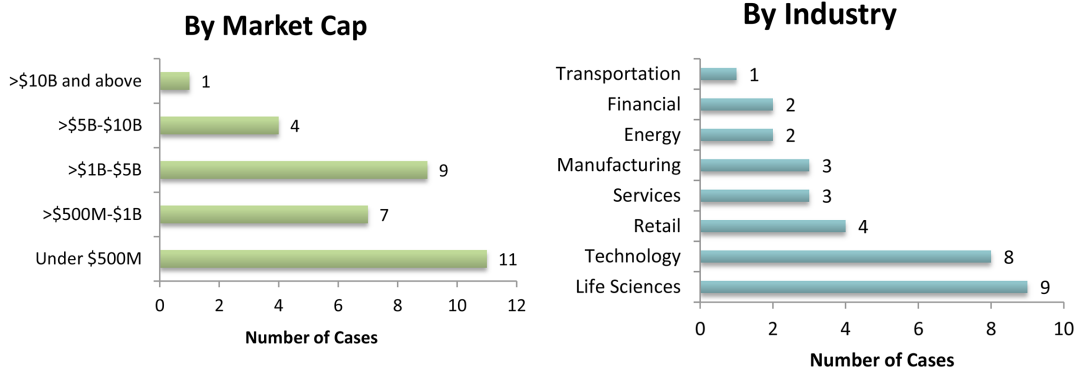
Woodruff-Sawyer & Co. is pleased to present the latest information concerning securities litigation filed against public companies in the United States. The information below comes from the DATABOX™ as of March 31, 2014. The DATABOX™ tracks securities class action litigation filed against public company issuers and their directors and officers.¹

SECURITIES CLASS ACTION CASES

New Cases

32 cases were filed in 1Q2014 — a 13% increase in filings over 1Q2013. 11 cases were filed in April versus 7 in April 2013. It is too early to tell if this increased activity will be sustained throughout the year. There is no single set of facts influencing the filings such as the financial crisis or reverse merger Chinese company issues.

The breakdown by market cap and industry is as follows:



Over 80% of the companies fall within the \$0-\$5B market cap range. Life Sciences companies took the lead in the first quarter, just slightly ahead of cases filed against Technology companies — a higher than usual number of cases so early in the year. The allegations against Life Sciences companies are not just the typical clinical trial issues. Allegations regarding off-label marketing, solvency, and deceptive promotion tactics to boost stock prices are some of the additional issues for which Life Sciences companies were sued for in 1Q2014.

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.



Settlements

There were 16 cases settled for an aggregate of \$461.5M in 1Q2014. The largest settlement, by Massey Energy Company, accounted for 57% of the total (\$265M). The following are the top five settlements of 1Q2014:

Company	Year Case Filed	Settlement Amount (\$M)	Comments
Massey Energy Company	2010	\$265.0	Mine safety issues (2010 explosion; 29 lives lost)
Hospira, Inc.	2011	\$60.0	Quality control deficiencies and manufacturing issues
Weatherford Intl. Ltd.	2011	\$52.5	Improper accounting for taxes; restatement of financials
Heckman Corporation	2010	\$13.5	Post-merger acquisition issues (China Water)
Advanta Corp.	2009	\$13.3	Impaired loans and customer delinquency issues
K-V Pharmaceutical Co.	2008	\$12.8	Quality control deficiencies and manufacturing issues; product recalls

SEC — RENEWED FOCUS ON ACCOUNTING FRAUD

In past reports, we have highlighted the SEC's priorities on ferreting out financial fraud. The Financial Reporting and Audit Task Force (the "Fraud Task Force") has been charged with the task of looking for new ways of finding accounting fraud. As the Wall Street Journal reported in late 2013², the head of Fraud Task Force has indicated that they are zeroing in on the following red flags:

- *Accounting revisions* – A pattern of multiple revisions in a short period of time
- *Book earnings vs. taxable income* – Relatively high recorded book earnings with minimized taxable income
- *Off-balance-sheet transactions* – Large number of off-balance-sheet transactions
- *Non-GAAP measures* – Performance measures that don't comply with GAAP
- *Material weakness and internal controls* – Financial misstatements with no material weaknesses reported

The SEC's Director of the Division of Enforcement, Andrew Ceresney, has also made it clear in public speeches that the SEC is intent on using all its tools in its arsenal to root out fraud. One of his goals is to help bring the SEC's "swagger" back in the aftermath of the financial crisis. In a speech to the American Law Institute in September 2013³, Director Ceresney noted that even though there had been an overall reduction in restatements over the past few years, there has been an increase in the number of restatements for companies with market caps over \$75M. He expressed doubts that a drop in reported fraud is a reduction in instances of fraud. Conceding the significance of Sarbanes-Oxley and the positive impact it has had on financial reporting, Director Ceresney pointed out that the additional controls are not always effective at finding fraud. Moreover, he asserted that incentives still exist to manipulate financial statements and the methods to do so are still available. Following those comments, he highlighted some of the areas that both the Fraud Task Force and SEC investigative staff will cover:

- Decisions made by management and auditors with respect to reserves
- Revenue recognition issues
- Independence violations by audit firms with regard to both public and private company clients
- Accountability of audit committees, which serve as gatekeepers for quality financial reporting
- Companies with substantial foreign operations that are publicly traded in the US

² The Wall Street Journal, December 12, 2013, "Five Accounting Red Flags the SEC is Watching."

³ Speech by Andrew Ceresney to the American Law Institute Continuing Legal Education Conference on September 19, 2013.



- Auditors in the “public watchdog” role — particularly when there is a significant restatement or improper accounting that has been discovered or revealed via sources such as a whistleblower, the SEC or the media

While these are not new topics of discussion, the renewed focus on these matters will likely lead to more enforcement actions and criminal prosecutions. Some of these efforts may be directed against audit committee chairs. Consider, for example, in April 2014 enforcement actions were brought against two audit committee chairmen of public companies with substantial operations in China (AgFeed Industries and L&L Energy). The gist of these actions was that the chairmen were aware of egregious accounting fraud and failed to properly investigate and disclose them to investors. Director Ceresney stated that the AgFeed case was “a cautionary tale about what happens when an audit committee chair fails to perform his gatekeeper function in the face of massive red flags.”⁴ Sanctions were imposed with no known monetary penalties. These cases were examples of excessively bad conduct that is unusual in nature. However, they are also a signal from the SEC that they are carrying out their mission to investigate audit committee members who fail to perform their gatekeeper functions.

D&O NOTEBOOK: DIRECTORS & OFFICERS LIABILITY BLOG

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 director and officer liability. [D&O Notebook: 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.

Recent blog posts that may be of interest to you:

- [The Latest on Cyber Threats as a Board-Level Issue](#)
- [D&O Insurance Claims - 4 Ways to Optimize Your Recovery](#)
- [The ABCs of Your Private Company D&O \(Policy Terms\)](#)
- [Timing, D&O Insurance, and Your IPO \(or M&A Event\)](#)
- [D&O Insurance for your IPO](#)

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).

⁴ SEC Press Release, March 4, 2014: *SEC Charges Animal Feed Company and Executives in China and U.S. With Accounting Fraud.*