W S & Co
WOODRUFF SAWYER & COMPANY

D&O DATABOX FLASH REPORT

October 2014

DATABOX™

THIRD QUARTER SECURITIES CLASS ACTION REPORT

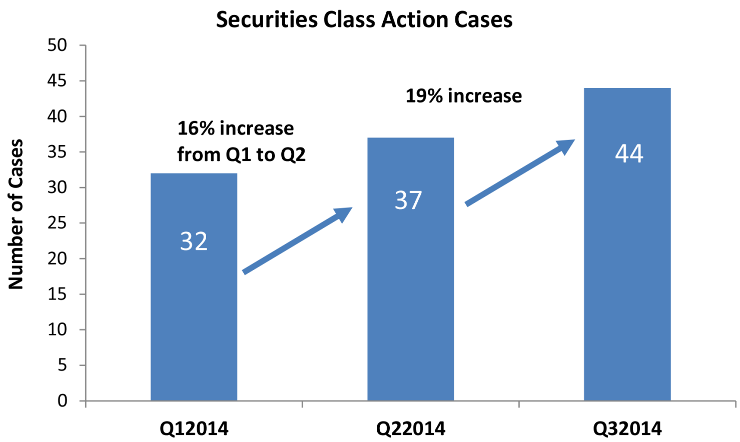
As of September 30, 2014

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 September 30, 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

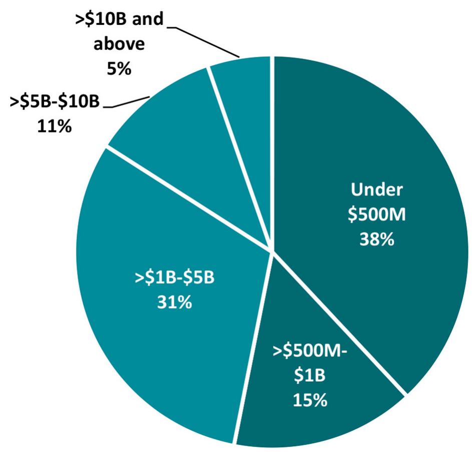
Third quarter activity was up with 44 cases being filed for a total of 113 cases filed in 2014 thru Q32014. Filing activity has increased from 16% to 19% from quarter to quarter in 2014:



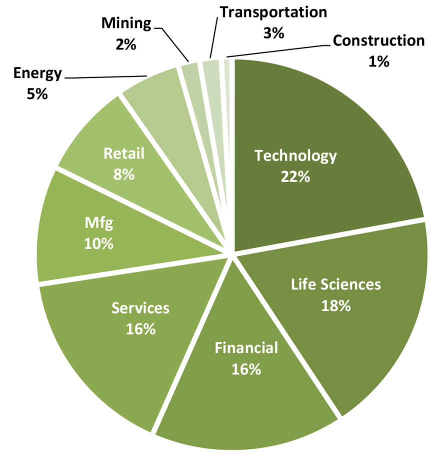
If 2014 tracks to the data from previous years, we expect to see filings in the fourth quarter drop off from previous quarter filings, although not significantly. If so, we would expect to see a total of 140-150 cases filed in 2014. This would be an increase ranging from 4-11% from 2013 and 10-18% from 2012 bringing the filing level back up to the 2011 level of 140 cases filed. Unlike in 2011, however, the total number of cases being filed in 2014 is not being inflated by "outlier" suits like those filed against Chinese reverse merger companies, the driver for increased filings in 2011. The ten-year average for cases filed from 2004 through 2013 is 139 cases per year. The following charts break down the year to date filings by market capitalization and industry:

[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.*

Cases By Market Cap*



Cases By Industry



*53% of cases fall in the $0 - $1B range (60 of 113 cases)

The third quarter was particularly active for filings against companies with accounting issues. 21 of the 44 companies (47%) were sued for a myriad of accounting problems involving:

- Accounting errors related to allowances for uncollectible amounts
- Losses not recorded in a timely manner related to acquisitions
- Failing to adequately cover for bad loans on the bank's books
- Failing to timely disclose a write-down for an underperforming product
- Accounting irregularities in a company's major business segment
- Valuation methodology issue related to a liability sold to a company that the COB had a majority stake in
- FCPA investigation of a company's operations in Russia
- Accounting treatment of certain royalty rights
- Revenue recognition issues

For 2014 to date, 49 lawsuits out of 113 are attributed to accounting problems (43%).

Additionally, allegations related to product/service issues were made against 36% of the companies sued in Q32014 (21 companies). Here is a sampling of the problems encountered by some of these companies:

- FDA noncompliance of a manufacturing facility
- Loss of a long-held major contract via a bidding process
- Viability of development and production of next generation product
- Robustness of a company's processes and algorithms regarding its product
- Product safety and effectiveness issues of a medical device
- Deceptive lending and recruiting practices by an operator of a national for-profit college
- Negative publicity regarding alleged animal cruelty practices

While allegations connected to accounting and product matters are old news, the various pitfalls that a company can encounter are a reminder of the many ways in which a company can find themselves the target of a plaintiffs' law firm. In fact, a few companies are receiving a lot more attention for their activities as noted in the following section.

Sue Me Once Shame on You, Sue Me Twice . . .

While companies are concerned about being hit with a securities class action lawsuit following bad news and a stock price drop, there have been a handful of companies that are getting a double whammy of having been sued ***twice*** in the past two years:

- Bankrate, Inc.
  - 2013 – Allegations of misleading investors about the quality of their insurance leads in their IPO prospectus. Settled for $18M in 2014
  - 2014 – Improper recognition of revenues and expenses that came to light as a result of an SEC investigation
- Hertz Global Holdings Inc.
  - 2013 – Loss of sales volume in the U.S. airport rental market and issues with divestiture of its Advantage subsidiary
  - 2014 – Accounting errors necessitating restatement of financials
- Impax laboratories, Inc.
  - 2013 – Quality control and manufacturing practices issues at their Hayward facility. Proposed settlement of $8M in 2014
  - 2014 – Quality control and manufacturing practices issues at their Taiwan facility.
- ITT Educational Services, Inc.
  - 2013 – Questionable accounting standards with regard to its risk sharing activities in loan programs
  - 2014 – Questionable activities regarding its student loan program; restatement of financials. SEC is recommending an enforcement action
- Lumber Liquidators Holdings, Inc.
  - 2013 – Sale of formaldehyde-laden Chinese flooring, a portion of it sourced from endangered habitats
  - 2014 – Supply chain problems and product shortages impacting earnings

Multiple securities class action filings against a company in such a short time period is a rare and unusual occurrence. Five companies being sued twice in a span of less than two years does not necessarily indicate that a trend is in the making, but it is worth noting. Clearly a company that focusing on remediating the issues and events that may have contributed to a class action lawsuit for a specific period need to look for any other suits that may be in the making. The events of the first lawsuit that could lead to another set of issues subsequently affecting a company's stock price will surely not be missed by plaintiffs' firms.

Settlements

Cash settlements for securities class action lawsuits in Q32014 amounted to $1.1B. The majority of this aggregate amount consisted of the settlement by AIG for $960M (85%) for a 2008 lawsuit concerning their exposure to the subprime mortgage market through its credit default swap business. The total amount for cash settlements in 2014 to date is $1.8B. The top five settlements total $1.4B – 77% of the 2014 cash settlements to date (as set forth below).

Company	Year Case Filed	Cash Settlement Amount	Comments
AIG	2008	$960.0M	Subprime credit issues
Massey Energy Company	2010	$265.0M	Mine safety issues (2010 explosion; 29 lives lost)
Psychiatric Solutions, Inc.	2009	$65.0M	Concealment of earnings liabilities
State Street Corporation	2009	$60.0M	Subprime credit issues
Hospira, Inc.	2011	$60.0M	Quality control deficiencies and manufacturing issues

OTHER TOPICS OF NOTE

SEC Enforcement Actions – 10% Increase in 2014

The activities of the SEC have been highlighted in our past reports and since April 2013 with the changing of the guard in the appointment of Mary Jo White as the SEC's Chairman, there has been a lot of emphasis on ferretting out the bad guys. The SEC's recent annual report for FY2014 notes that a record 755 enforcement actions had been filed and orders obtained for $4.16B in disgorgement and penalties (as compared to 686 and 734 actions and $3.1B and $3.4B for disgorgement and penalties in 2012 and 2013, respectively). The SEC noted in their press release:

> "Aggressive enforcement against wrongdoers who harm investors and threaten our financial markets remains a top priority, and we brought and will continue to bring creative and important enforcement actions across a broad range of the securities markets," said SEC Chair Mary Jo White. "The innovative use of technology – enhanced use of data and quantitative analysis – was instrumental in detecting misconduct and contributed to the Enforcement Division's success in bringing quality actions that resulted in stiff monetary sanctions."

In addition to technology enhancements, the SEC has also availed themselves of additional powers gained via the Dodd-Frank Act through the use of their administrative proceedings to handle tough cases versus having them processed through the federal court. The use of these proceedings is creating large concerns amongst defendants and their counsel who believe that this process is giving the SEC the "home court" advantage. A recent Wall Street Journal article dated October 21, 2014 has noted that the SEC's win rate has been considerably higher in front of its administrative law judges than it is in jury trials. In fact the use of these proceedings has been challenged in court in two cases that have yet to be decided upon. For more on this subject, please refer to the following post on our D&O Notebook: Directors & Officers Liability Blog: SEC Showing No Signs of Reduced Enforcements in FY 2015

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 on topics that have been making the news:

- Tax Inversion: American Patriotism vs. American Capitalism
- SEC to Insiders: When We Say File Your Section 16(a) Forms, We Mean It
- Benefit Corporations: New Risk for Directors and Officers?
- Looking Ahead: 2015 D&O Considerations

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 .

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, visit www.wsandco.com, or email Donna Moser (dmoser@wsandco.com) or Priya Huskins (phuskins@wsandco.com).