

July 2017

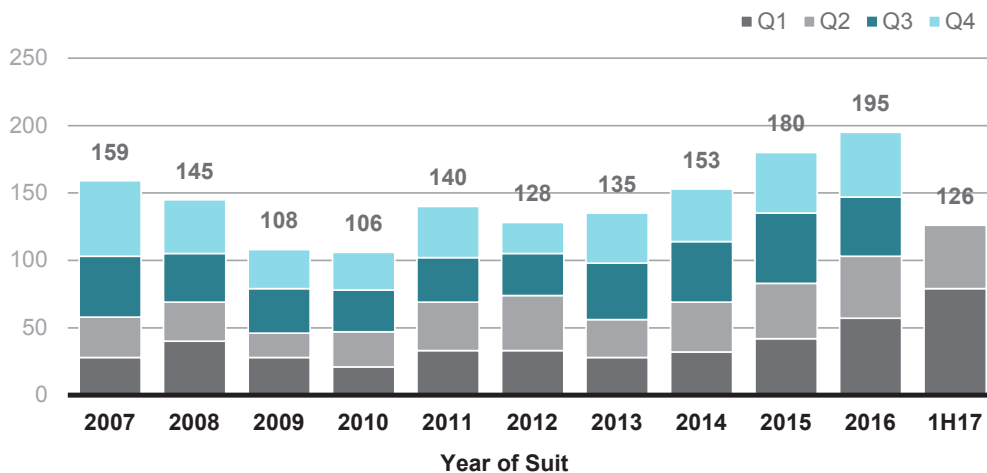
DATABOX™ Mid-Year Securities Class Action Report

As of June 30, 2017

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 June 30, 2017. Databox tracks securities class action litigation filed against public company issuers and their directors and officers.¹

Record-Breaking Activity in First Half of 2017

Securities Class Action Suits Filed



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¹For 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.

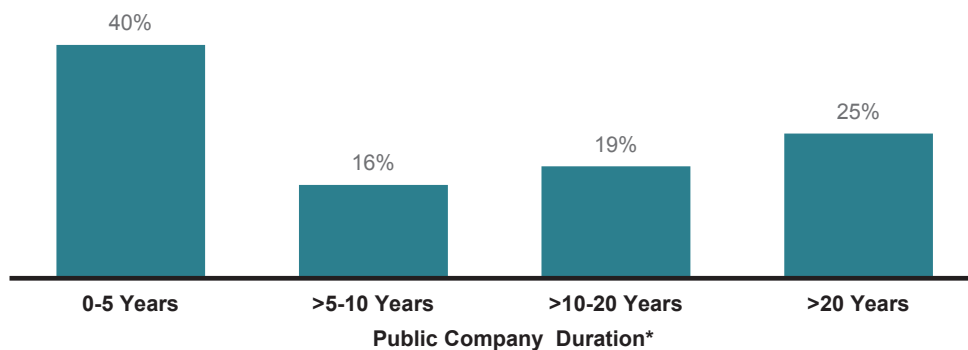
2017 started off with a frenzy of filing activity, particularly in the first quarter, in which 79 suits were filed – a 132% increase over the 10-year average of first quarter filings of 34.3 cases. The second quarter followed with another ten-year second quarter high of 47 suits, resulting in a total of 126 suits filed through June 2017. Taking into account the pace of filing activity over the last 10 years, there is a high probability that up to 200-225 suits will be filed in 2017. This increased level of activity has not been seen since the previous 10-year period of 1996 through 2006 in which the 10-year average was 223 cases (as compared to the recent 10-year average of 145 cases from 2007 through 2016).

Points of interest with regard to the increased activity:

- **Industry:** Biotechnology sector moves ahead of the Technology sector with 32 cases filed (25%). The Technology sector which, historically has always led in number of filings, now follows Biotechnology with 24 cases filed (19%). The Manufacturing sector comes in third place with 21 cases (17%)
- **Size of Company:** Smaller market cap companies of \$1B and less make up nearly half of the companies sued, at 59 companies (47%)
- **Public Company Lifespan:** Over half of the companies that were sued have been public companies for 10 years or less (56%)
- **Location:** 23% of the companies sued are headquartered outside of the US (Brazil, Canada, China, Denmark, Hong Kong, Ireland, Israel, Mexico, Netherlands, Peru, Switzerland, United Kingdom)

Litigation against IPO companies is of particular note given how much it is fueling the uptick in securities class action suits. To illustrate this point, the distribution of companies that have been sued during their public lifetime is set forth below. Notably, 56% of the companies sued have been a publicly traded company for 10 years or less; 71% of these 70 companies were publicly traded for five years or less (50 companies).

Percentage of Companies Sued



* Companies sued January thru June 2017 that were trading on a U.S. Exchange

Another factor contributing to the high volume of securities class action suits is the phenomenon of smaller plaintiffs' firms playing a bigger role (in the last few years) when it comes to suing smaller public companies.

Additionally, as noted earlier, foreign companies, a serious target of securities class action suits last year, are also receiving scrutiny this year with 29 companies sued to date in 2017. Total annual filings in 2017 will most likely equal or exceed the number of foreign companies sued in 2016. To date in 2017, the number of foreign filers sued has already reached 83% of the total foreign filers sued in all of 2016 (35 companies total in 2016). Remember, we are only halfway through the year.

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While many young public companies are being sued, it should be noted that high-profile, mature companies are not immune to a securities class action suit. Brand name companies such as Caterpillar, Fiat Chrysler, FTD, General Motors, Mattel, Tempur Sealy, United States Steel, and Western Union have also been sued. 22% of the companies sued were large market cap companies (28 companies with over \$10B market cap).

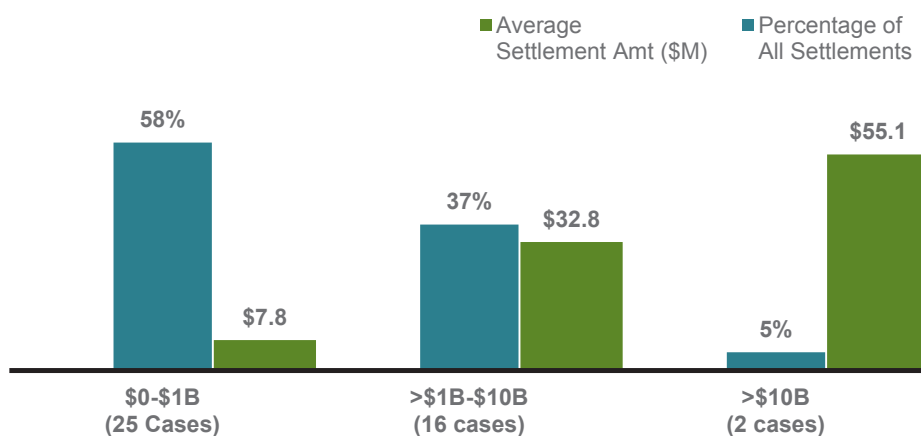
Settlement Activity Stays Steady

There were 43 settlements reported through June 2017. Examining the settlement ranges as organized below, shows that the suits in the aggregate are settling within five percentage points of the previous two years' rates:

Settlement Range	% of Total Settlements			Settlement \$		
	2015	2016	2017*	2015	2016	2017*
\$0-\$20M	72%	73%	77%	\$359M	\$362M	\$154M
>\$20M - \$100M	18%	17%	14%	\$727M	\$600M	\$196M
Over \$100M	10%	10%	9%	\$1.6B	(\$1.4B excl. \$B settlements)	\$481M

*Settlements from January 2017 through June 2017

As of the mid-year point, the average settlement amounts for smaller, middle and large size companies range from approximately \$8M to \$55M with companies below \$10B market cap comprising 95% of all settlements:



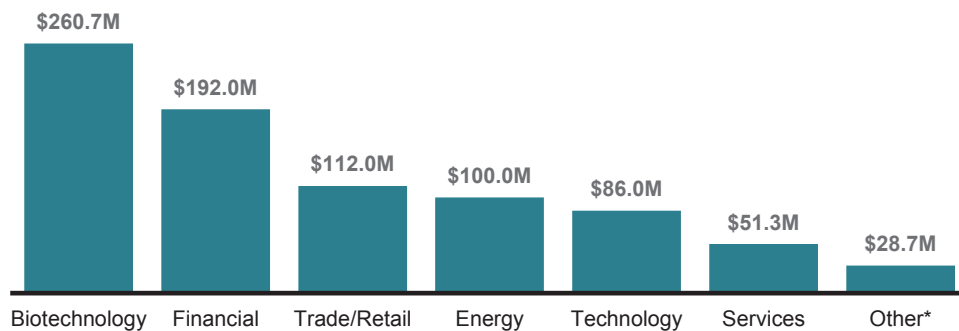
Settlements in 2017 have been reached for an aggregate amount of \$830.6M with the top five settlements set forth below:

Company	Year of Suit	Industry	Cash Settlement Amount
Salix Pharmaceuticals, Ltd.	2014	Biotechnology	\$210,000,000
Halliburton Company	2002	Energy	\$100,000,000
J.C. Penney Company, Inc.	2013	Trade/Retail	\$97,500,000
Rayonier Inc.	2014	Financial	\$73,000,000
Amedisys, Inc.	2010	Services	\$43,750,000

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These large settlements are spread across several industries as reflected in the chart below, which breaks down the distribution of settlement dollars by industry sector:

Settlement \$ by Industry:



*Other: Mfg - \$14.3M; Construction - \$10.5M; and Transportation - \$3.9M

An Update about M&A Lawsuits

The impact of the Trulia decision issued by the Delaware Court of Chancery in early 2016 might have been an unintended one: we are seeing a shift of filings from state courts to federal courts. 82% of the M&A lawsuits filed from January to June 2017 have been filed in federal courts – over triple the rate of filings in 2016, which saw approximately 27% of M&A lawsuits filed in federal court.

The Trulia decision put the spotlight on non-disclosure only settlements in which the court has decided that plaintiffs should not be awarded substantial fees unless the disclosures actually benefited the stockholders². Now that the majority of M&A cases are being litigated in federal courts all over the country, plaintiffs are most likely forum shopping as to which circuits may issue decisions that will trend in their favor. With federal courts having issued decisions on both sides of the matter³, plaintiffs and defendants are now approaching the post-Trulia world with caution. A mixed bag of approaches is underway, resulting in an uptick of other activities like mootness fee applications by the plaintiffs⁴. And, as companies have been given more tools to push back on disclosure-only settlements (e.g. state choice of forum bylaw provisions)⁵, they continue to focus on making sure there are no deficiencies in their pre-merger disclosures while being aware of the post-closing merger minefields that may lie ahead.

So for now, the bottom line is that M&A lawsuits are not going away or dramatically dropping off – they have just become a little less predictable and a lot more likely to be brought in federal court.

For More of the Latest News

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

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² D&O Notebook: *The Death of Disclosure-Only Settlements*

³ D&O Notebook: *M&A Disclosure-Only Settlements: Still Happening*

⁴ D&O Notebook: *Mootness Fees: The Disturbing Counterpart of Disclosure-Only Settlements*

⁵ D&O Notebook: *Forum Selection Bylaws Upheld*

Recent blog posts that may be of interest to you:

- [What You Don't Know Can Incarcerate You: Criminal Negligence and the Responsible Corporate Officer Doctrine](#)
- [The Entrepreneur's Roadmap: From Concept to IPO](#)
- [Is Securities Class Action Reform on the Horizon?](#)
- [Third-Party Litigation Funding - Mo' Money, Mo' Problems?](#)
- [Securities Class Actions 101: An Overview for Directors and Officers](#)
- [How IPO Companies Are Adopting Choice of Forum Bylaws to Avoid Section 11 Suits in State Court](#)
- [Independent Director Liability Insurance - Worth It?](#)

About DATABOX™

Databox is Woodruff-Sawyer & Co.'s proprietary director and officer litigation database. Included within Databox is information concerning every securities class action lawsuit filed against public company directors and officers since 1988. Woodruff-Sawyer uses Databox to help its client model their D&O litigation-related risk. For questions about 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 an active partner of Assurex Global and International Benefits Network. For nearly 100 years, we have been partnering with clients to deliver effective insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Oregon, Washington, Colorado, Hawaii and New England.

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