



INSIGHTS



D&O NOTEBOOK | AS OF JUNE 30, 2019

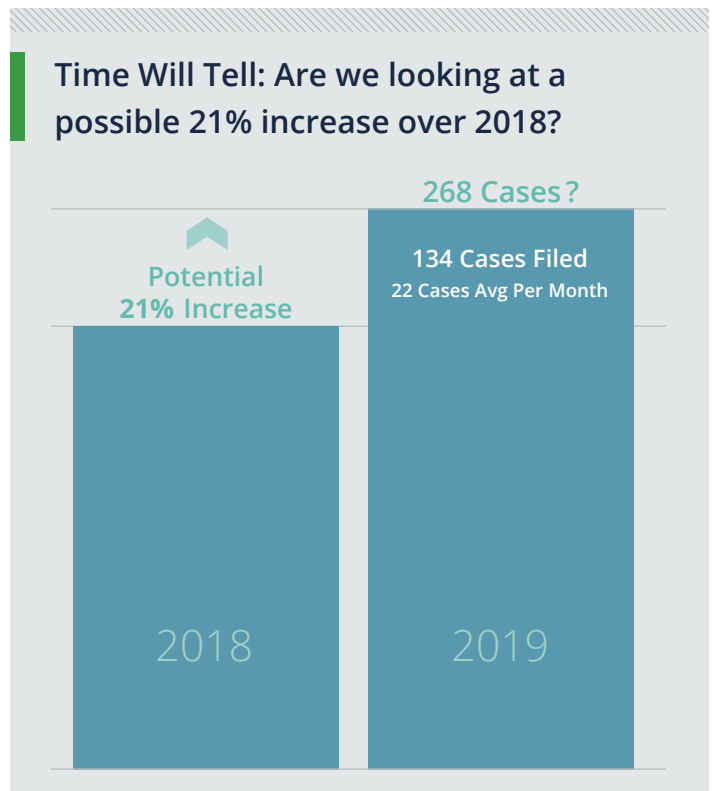
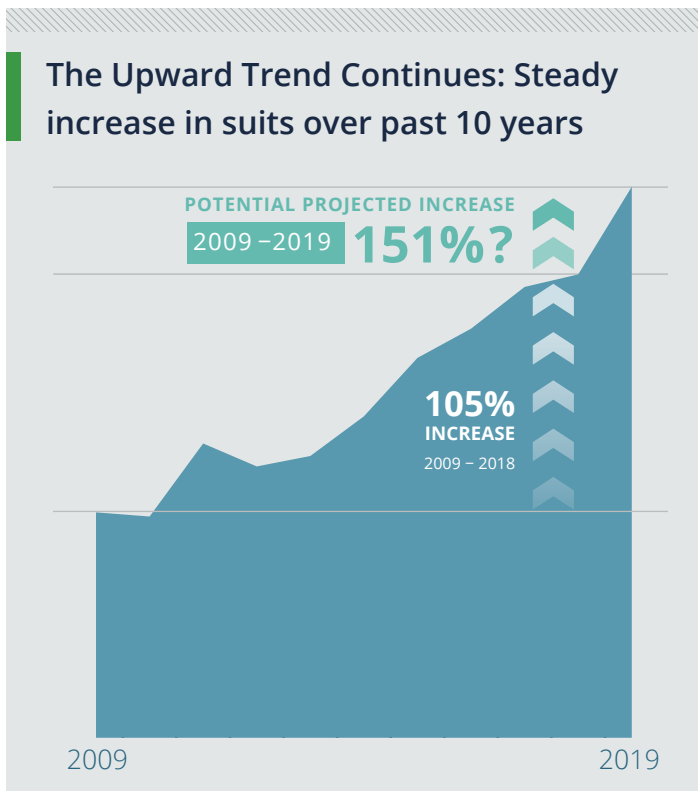
2019 Mid-Year DataBox Update

Securities Class Action Suits Show No Signs of Waning: What It Means for D&O Rates

Executive Summary

The pace of filing activity in the last few years has caught everyone's attention with its high frequency rate, which is translating into unusually high premiums. If the pace of filing activity in the first half of 2019 is a bellwether for what to expect when this year wraps up, there can be no expectation of D&O insurance rates coming down. As we break down the activity that occurred in the first half of 2019, the overriding theme we see is that public companies across many spectrums, whether it be size, maturity or geography, are being impacted by securities class actions in a broader venue that now includes both federal and state courts covering a wide variety of allegations.

Headed for Another Record-Breaking Year?



Who's Getting Sued? Litigation Pain Across All Company Sizes

Securities class action activity in the first half of 2019 has been notable for continuing to be an equal opportunity risk for both newer and older public companies.

51% of the companies sued have been trading for >10 years

51%

of the companies sued

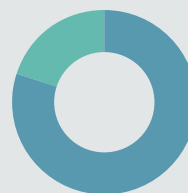
AVERAGE TRADING SPAN: 26.5 YEARS

More Lawsuits in More States for IPO Companies

There has been an uptick in Section 11 claims now that companies can be sued in both federal and state courts, due to the **Cyan Decision**. State courts are increasingly favored by the plaintiffs' bar; filings are up and spreading across the country.

Another side effect to the Cyan decision is that more companies are being sued in both state and federal courts for the same Section 11 allegations. Of the 21 companies that were sued for a Section 11 allegation, seven of them had a parallel suit filed in either state or federal court in the first half of 2019 (as compared to the average of six parallel filings per year over the period of 2010–2017 and 13 parallel filings in 2018)¹. Companies are now having to allocate more time and money to the management of cases in several venues.

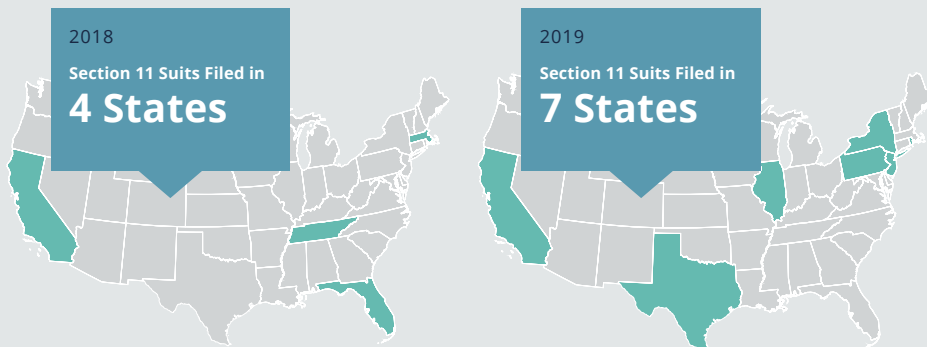
15 Companies Sued for Section 11



- 12 Sued for IPO and Follow-on Offering
- 3 Sued for M&A

¹Source: Securities Class Action Filings – 2018 Year in Review, Cornerstone Research

17 Lawsuits Filed in 1st Half of 2019



18%

BIGGER SHARE of all lawsuits compared to 2018

Name-Brand, Mature Companies Also Getting Hit

Almost 20% of securities class actions filed were against large cap companies with over \$10B in market cap. So while IPO companies continue to be vulnerable to the challenges of entering and maintaining a presence in the public market, mature companies are in the mix as well.

For example, if we take a look at S&P 500 companies, 14 have been sued in 2019 or 11% of the 134 companies sued. The reasons for these suits run the gamut, from M&A to safety to supply chain issues.

Big Names Being Sued and the Reasons Why:

Apple

Slower revenue growth; fewer phone upgrades, competitive Chinese market

AT&T

Merger with TimeWarner – state court suit

Boeing

737 MAX planes safety and design problems

CVS

Merger with Omnicare – state and federal court suits

FedEx

Acquisition of TNT Express and related cyberattack

Kraft-Heinz

Accounting and supply chain issues

Molson Coors

Tax liabilities accounting issue

The Market Responds

Insurers are raising their rates, even in excess layers:

- 10% to 50% increases
- Up to 100% for some companies that fall in the category of unicorn, healthcare-related, or IPO.

Who's Affected?

Public companies of all industry types, sizes, and maturity levels (regardless of location).

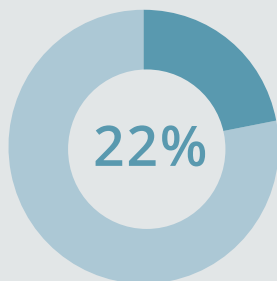
Foreign Companies Comprise Almost a Quarter of All Cases

There has been no abatement in filings against foreign companies listed in the US, which comprise 22% of all cases filed in 2019 through June. As highlighted in our D&O Notebook blog post in March 2019, "Why D&O Costs Are Soaring for Foreign Filers"², steep increases in premiums are being attributed to a higher number of lawsuits filed against foreign filers and larger total settlement dollars being paid out in the last decade, especially so in the last five years.

²<https://woodrufflawyer.com/do-notebook/do-costs-soaring-foreign-filers/>

Foreign Companies Comprise 22% of All Cases Filed

30 LAWSUITS 28 COMPANIES 15 COUNTRIES



Belgium	Denmark	Ireland
Bermuda	Finland	Israel
Brazil	France	Russia
Canada	Germany	Taiwan
China	India	United Kingdom

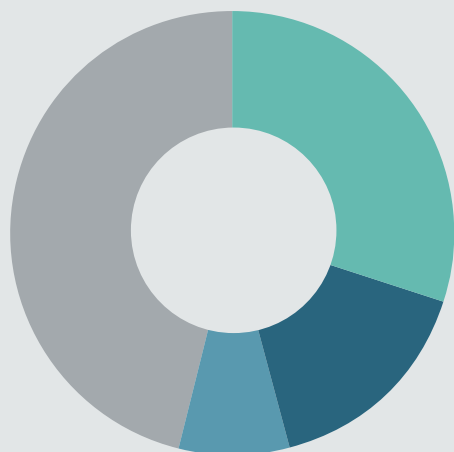
When Will It End?

Expect significant hikes in D&O rates to continue for the next 18 to 24 months.

Only increased insurer capacity, more competition, and a downturn in litigation activity will bring relief to companies in premium costs.

Industry Concentrations: No Notable Shifts from 2018

Technology Industry Holds Biggest Share



30% Technology
16% Biotechnology
8% Finance
46% All Others

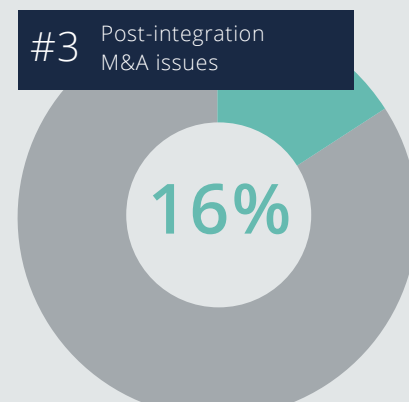
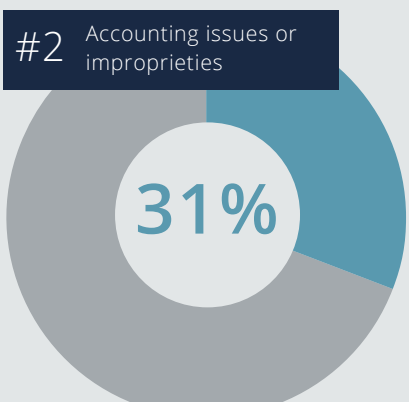
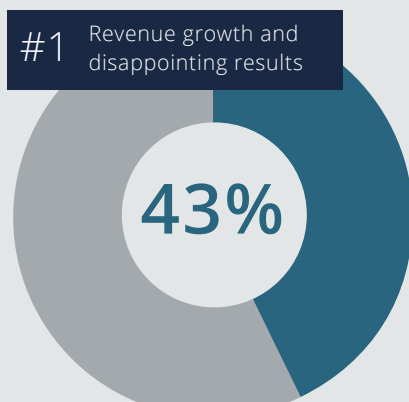
ALL OTHERS // TOP 3

14% Manufacturing
13% Services
10% Trade/Retail

Remainder under 3%:
Basic Materials, Construction,
Energy, Mining, Transportation,
and Utilities

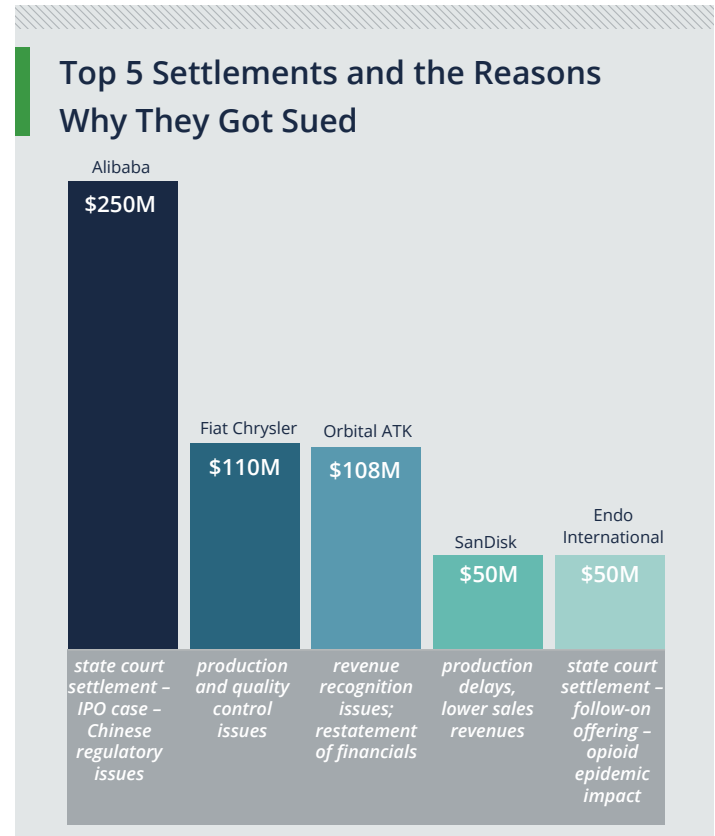
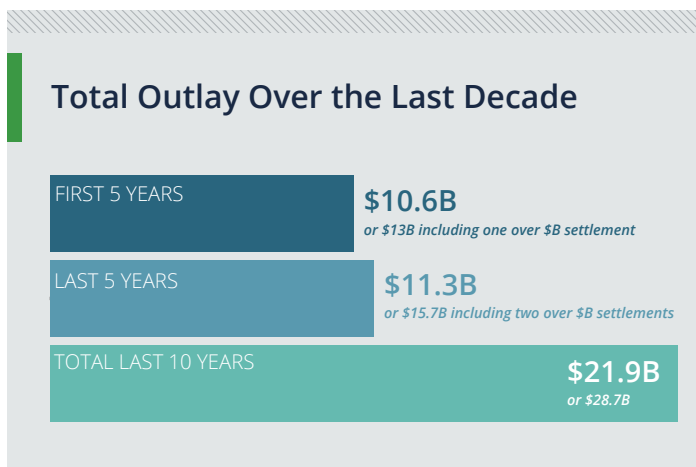
Why Me? Top 3 Reasons Why a Company Got Sued

#1 Reason - Revenue Growth and Disappointing Results



Settlement Dollars Flowing Out at a Steady Pace

The rate of settlement dollars being paid out in 2019 (excluding settlements \$1B and over) are on track to reach near the 5- and 10-year averages of \$2.2 billion per year, in which 32% of the settlements made were for amounts of \$20 million and above.



The Result: Soaring D&O Premium Rates

Experts in the insurance industry have weighed in and the outlook is that the significant hikes in D&O rates will continue for the next 18 to 24 months.³

The high rate of filings and settlements, especially in the last two years, have led insurers to increase rates in their excess layers, a segment of the premium where in past years increases in the cost for the primary layer might have been offset by decreases in the excess layers. Carriers are charging more for (i.e., lowering the discount for) the lower excess layers—in some cases—dramatically—under the theory that the “burn layer” for any litigation has gotten much bigger than it used to be. Insurers are not backing off on rate increases, which have ranged from 10% to 50% and even more than 100% for some companies that fall in the category of unicorn, healthcare-related, or IPO.

The high rate of securities class action litigation affecting public companies of all industry types, sizes and maturity levels (regardless of location), coupled with the reduced capacity for new business by underwriters, is straining the market to respond in the predictable manner that insureds have been used to seeing in the last decade. Further impacting premiums have been the steady stream of M&A suits and large derivative suit settlements in the last decade. We will only see the relief in premium costs if more carriers enter the market (and thus increase market capacity and therefore competition in the market) or a downturn in the litigation activity.

STAY INFORMED

Shareholder class action trends, SEC enforcement actions, corporate governance, and the issues impacting the personal liability of your directors and officers. Priya Huskins addresses it all in the D&O Notebook.

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³ “D&O Rates Skyrocket in Hardening Market”, *Business Insurance*, June 25, 2019