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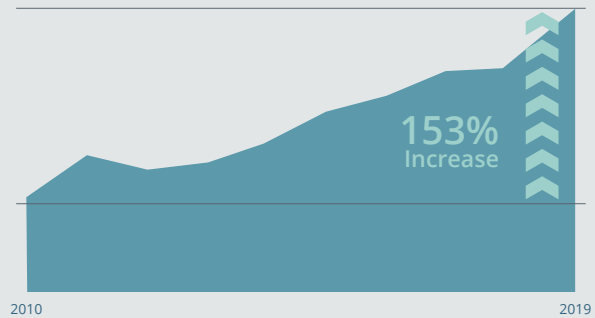
FLASH REPORT: 2019 YEAR-END SUMMARY

Insights about 2019 securities class action activities and developments and their relationship to historical trends—sourced from DataBox, our proprietary repository of over 30 years of data. DataBox powers our analysis of relevant information that gives our clients an accurate view of the D&O litigation environment for the assessment and mitigation of their management liability risks.

All-Time High in Securities Class Actions Signals New Realities

2019 was, to put it mildly, a very busy year for securities class action filings; we saw a record-breaking 268 cases filed—a 20% increase from 2018 and an all-time high for cases filed on an annual basis (excluding the IPO allocation cases filed in 2001). In our 2019 *Mid-Year Report* we predicted that 268 cases would be filed in 2019, yielding a 153% increase in filings over the last decade from 2010 to 2019.

The Upward Trend Continues: Steady increase in suits over past 10 years



Parallel Filings Account for an Active Year

To understand why 2019 was such a very active year for filings, it helps to understand the following interesting feature about the filing activity: The 268 suits were filed against 240 companies. Twenty-five of these companies were sued twice and two were sued three times in both state and federal courts for the same set of allegations, which are known as "parallel filings." For clarity, we count suits against the same company as different suits when underlying facts of the cases are different (e.g. different class periods and different reasons cited for the stock drop), or when more than one suit with the same set of allegations cannot be consolidated into one case. The latter is the case for parallel filings. We count parallel filings separately because these federal and state class action lawsuits will be litigated as separate cases in different courts (i.e., they cannot be consolidated).

A Troubling Development: Parallel Section 11 filings in federal and state courts resulted in 208% increase in filings



* 88 Consisting of 19 companies that were sued in both state and federal courts, including one company sued in two separate state courts, and one company that was sued first in 2018 and had its parallel case filed in 2019.

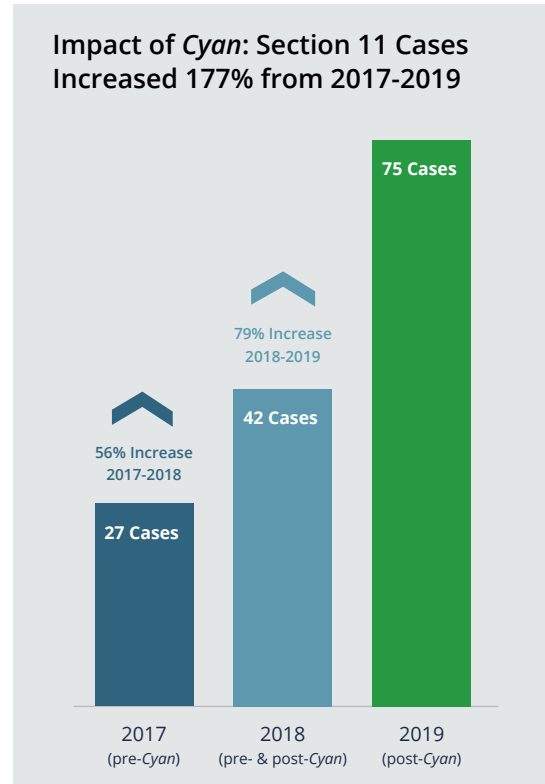
The increase in parallel filings is the unfortunate result of the March 2018 Supreme Court decision in *Cyan* that sanctioned filings of Section 11 cases in state courts, and is the main driver for the high number of filings in 2019.

Aftershocks of *Cyan*: Huge Increases in Filings Since 2017

To further illustrate the impact of *Cyan*, let's take a look at the number of filings, pre- and post-*Cyan* in the last three years. From 2017 to 2019 there has been a 177% increase in Section 11 filings.

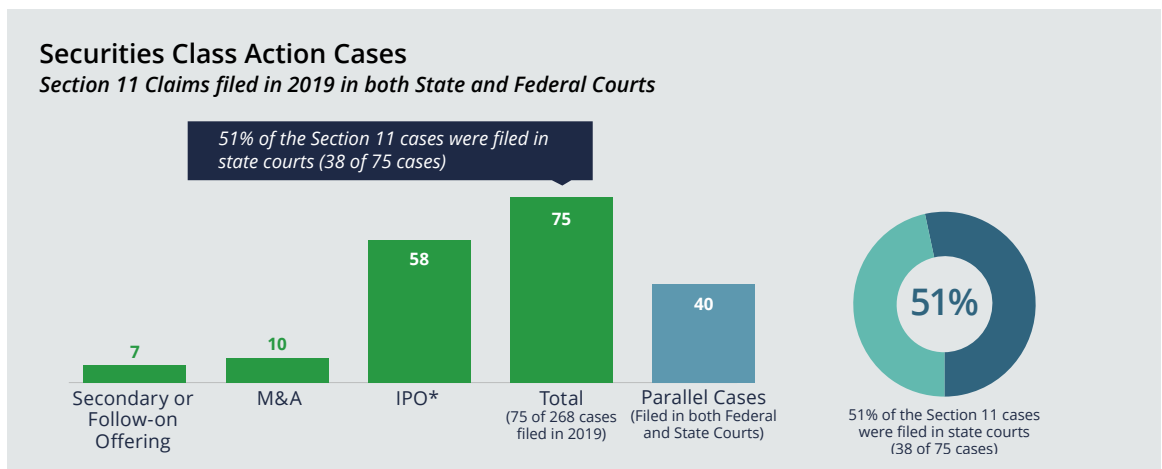
Costly Consequences for Companies Who Are Defendants

The data confirm the concerns that the insurance industry has had about plaintiffs being able to access the wider arena now available to them in state courts while also continuing to be able to avail themselves of the federal courts. The elevated costs of a company having to defend suits in several courts is now the new "normal." Dealing with the uncertainties of how state courts will conduct these lawsuits only adds to the difficulties—and consequently the expense—of defending these suits to a favorable outcome. Will the lawsuit prevail in federal or state court? Which court(s) will allow for a stay of proceedings while the case is being litigated in another court? Coordination of these suits is now critical to the defense of a lawsuit, which ratchets up the costs for the company.



Types of Offerings Being Targeted

While the majority of these Section 11 cases involved IPOs, other types of offerings such as follow-on offerings and offerings done in the context of M&A are also continuing to be targeted:



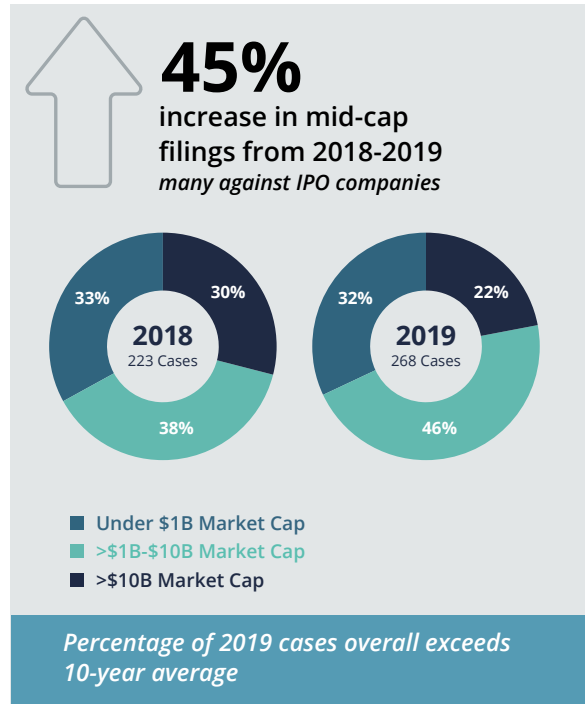
*3 of 58 IPO cases include a Secondary/Follow-On Offering

So to come back to the total number of filings in 2019, 28% of the total cases filed in 2019 were Section 11 filings, with the *Cyan* decision being the impetus for the rise in total filings. The data clearly shows that *Cyan* incentivized plaintiffs to bring an unrelenting onslaught of Section 11 lawsuits, particularly against IPO companies.

Does Company Size Matter? Filings By Market Cap

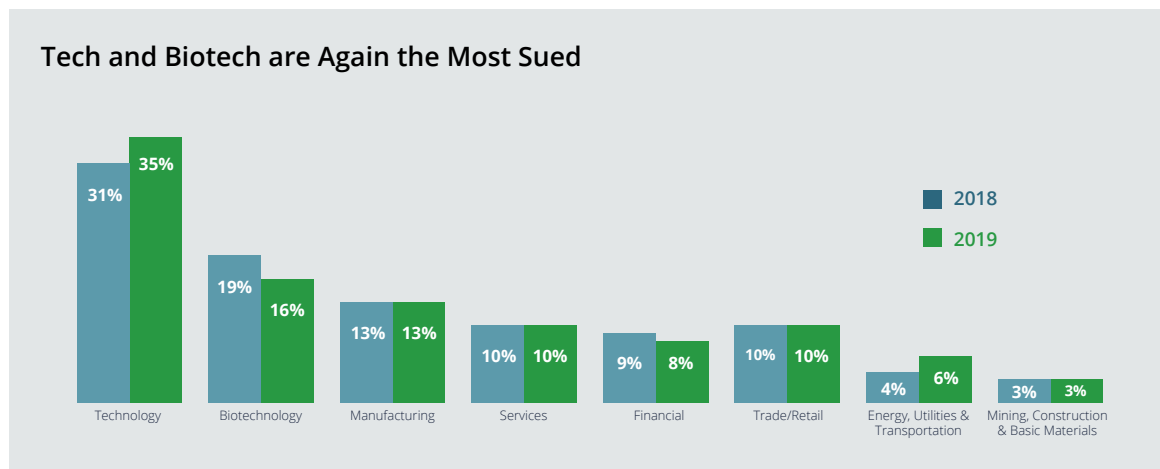
In 2018, filings against large-cap companies had reached an all-time 10-year high of 30%. In 2019, there was a shift downwards in this category. Although there was a drop in filings in the large-cap category, the percentage of all cases filed in 2019 of 22% exceeds the 10-year average of 18%.

The biggest increase in filings was against mid-cap companies. There was a 45% increase from 2018 to 2019. This is not surprising given that a quarter of all cases in this category in 2019 were against IPO companies—the "sweet spot" for Section 11 filings.



Tech and Biotech Continue to Lead: Filings By Industry

The usual suspects, the technology and biotechnology industries, accounted for 51% of all cases filed in 2019. While there were some minor fluctuations between these two industries as compared to 2018, there were no material or surprising shifts between industries that would signal any sort of serious shift in industry trends.



Who's Getting Sued: Other Noteworthy Company Characteristics

While a lot of the attention in 2019 was on newly-trading public companies, there are other aspects of the 2019 filing activities that are worth noting:

Maturity of Public Companies Sued

Considering the high number of Section 11 filings against IPO companies in 2019, one would surmise that companies new to the public arena would account for the majority of cases filed—but that was not the case. As in previous years, we continue to see the majority of cases filed against mature, public companies.

High-Profile Companies Sued

In addition to many brand-name companies being sued, 7.2% of the S&P 500 companies were sued in 2019 (as compared to 9.5% in 2018). A sampling of these types of companies is set forth below:

Mature, Public Companies Represent 42% of Those Sued

30% Companies trading less than 3 years*

28% Companies trading between 3 and 10 years*

42% Companies trading longer than 10 years*

*Trading on the US Exchanges



Debt issues as a result of several business combinations that resulted in a higher EBITDA ratio than their peers and a 50% cut in dividend payout



Time Warner acquisition issues related to misleading growth trends for its DirecTV Now business



Product safety issues that led to the grounding of its 737 Max 8 jets



Cybersecurity breach involving 106 million customers



Omnicare acquisition issues that led to a \$2.2 billion impairment charge as a result of long-term care business growth challenges



Ransomware attack against a newly-acquired company, TNT Express N.V.



Accounting and supply chain issues that resulted in a \$15.4 billion impairment charge



Misrepresentation of subscriber and revenue growth that revealed the critical need for a merger with T-Mobile

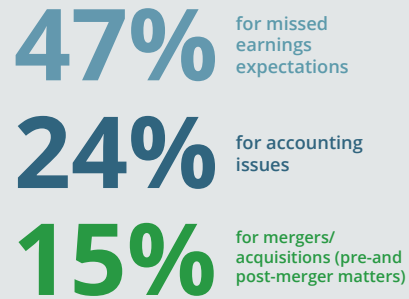
Foreign-Domiciled Companies Sued

Twenty-three percent of the suits involved companies headquartered in a total of 15 countries outside of the US. This is equal to the 10-year average of 23% for suits filed against such companies. Over half a billion dollars in settlements were reached against foreign companies in 2019 (\$602 million), which is one indication that the rate of suits filed against foreign filers is not expected to diminish in the near future.

Wide Variety of Reasons for Being Sued

As highlighted by the list of high-profile companies sued above, the triggering events that lead to lawsuits vary widely. Issues related to debt/liquidity, mergers and acquisitions, cybersecurity, product safety, clinical trials, self-dealing, fraud, and accounting are just a few of the reasons that set off a drop in stock price. The top three factors for suits being filed in 2019 related to:

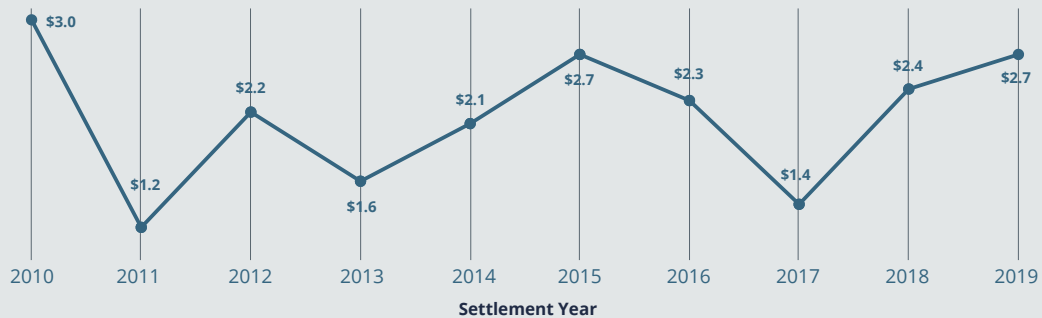
Top 3 Factors for Suits



Billions of Settlement Dollars Paid Out, Drawing Similarities from 10 Years Ago

A total of \$3.9 billion was paid out in 2019 involving 73 settlements. This included one settlement over \$1 billion that was paid out by Valeant Pharmaceuticals. Even excluding billion dollar settlements over the last 10 years, 2019 has nearly reached the 10-year high of \$3 billion that was distributed back in 2010.

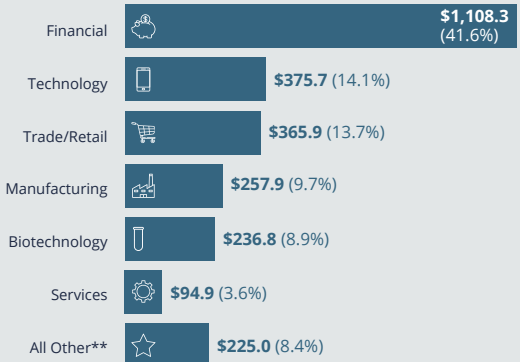
Total \$ by Settlement Year (\$Billion)



Which Industry Paid Out the Most?

In 2010, approximately 60% of the \$3 billion in settlements was attributed to those made by the financial sector and 30% by the technology sector. Settlements pertaining to the subprime credit crises contributed to the high percentage of dollars paid out in 2010 by the financial sector. Ten years later in 2019, the top three sectors paying out settlement dollars were financial (42%), technology (14%), and trade/retail (14%). One settlement of \$983.5 million by American Realty Capital accounted for most of the settlement dollars that were paid out in the financial sector. The following is a breakdown of all settlement dollars paid out in 2019 by industry sector.

Settlement Dollars by Industry (\$Million) Total: \$2.7 Billion*



* Excluding one settlement over \$1B
 ** All Other: Transportation - \$20M and Utilities - \$205M

Of the \$3.7 billion paid out in 2019, \$3.2 billion or 86% of all settlement dollars, were made by the following companies:

Top 12 Settlements in 2019				
Entity	Suit Year	Industry	Amount	Case Matter
Valeant Pharmaceuticals International Aal	2015	Biotech	\$1.2B	Deceptive practices to block generic alternatives
American Realty Capital* (n/k/a VEREIT, Inc.)	2014	Financial	\$983.9M	Accounting fraud
Alibaba Group Holding Limited	2015	Trade/Retail	\$250M	Sale of counterfeit goods
SCANA Corporation	2017	Energy	\$160M	Major cost overruns with nuclear reactor project
Fiat Chrysler Automobiles N.V.	2015	Manufacturing	\$110M	Production and quality control problems
Orbital ATK, Inc.	2016	Technology	\$108M	Accounting and revenue recognition issues
Endo International plc	2017	Biotech	\$82.5M	Drug safety issues
SunEdison, Inc.	2015	Technology	\$74M	Liquidity and debt issues
Endo International plc	2017	Biotechnology	\$50M	Secondary offering disclosures
FleetCor Technologies, Inc.	2017	Services	\$50M	Marketing and sales issues
RH (Restoration Hardware)	2017	Trade/Retail	\$50M	Inventory and production problems
SanDisk Corporation	2015	Technology	\$50M	Production and sales issues
Total:			\$3.2B	

*Includes \$245.9M towards settlements made with other shareholders separate from the SCA.

Since the majority of settlement dollars in 2019 were paid out by 11 companies, the median settlement amount has surpassed the 2018 median amount by 40% and exceeds the 10-year average by 75%. When the top 12 settlements paid out by the 11 companies above are removed from the total settlement dollars, the 2019 median drops down to \$11.4 million—but this median number still exceeds both the 2018 and 10-year median settlement amounts.

2019 Median Settlements Exceed Both 2018 and 10-Year Medians			
Settlements*	10 Years (2010 to 2019)	2018	2019
Total \$	\$22B	\$2.4B	\$2.6B
Average	\$30M	\$28M	\$37M
Median	\$8M	\$10M	\$14M
75th Percentile	\$21M	\$25M	\$21M

Excluding settlement \$1B and over.

A Side Note About IPO Companies and Section 11 State Court Settlements

From 2015 through 2018, there have been 18 Section 11 IPO cases that have reached settlements. These settlements have ranged from \$2.5 million to \$75 million for cases that had been filed between 2012 and 2016. In 2019, there was just one settlement of a state court Section 11 case (the case first filed in 2016), and that settlement was for a relatively modest \$8.65 million. Notwithstanding this lull in settlements in 2019, the pipeline is very large. As a consequence of the *Cyan* decision, there are now approximately 60 Section 11 cases against IPO companies in state courts around the country that have yet to come to a resolution.

60

Approximate number of Section 11 cases against IPOs in state courts that have yet to come to a resolution.

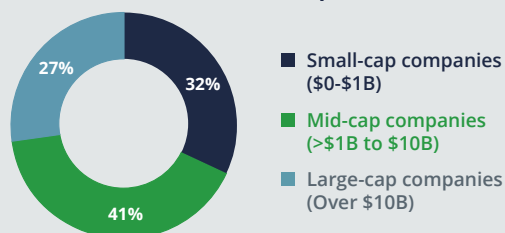
A majority of the companies hit by these suits are finding themselves having to defend parallel suits filed in federal courts as well. And there is no doubt that the March 2018 *Cyan* decision emboldened the plaintiffs given that 86% of these open cases were filed in 2018 and 2019. From this it is obvious that we will continue to see more settlements and very large legal defense bills in the near future.

The Bigger Picture When it Comes to Securities Class Action Filings

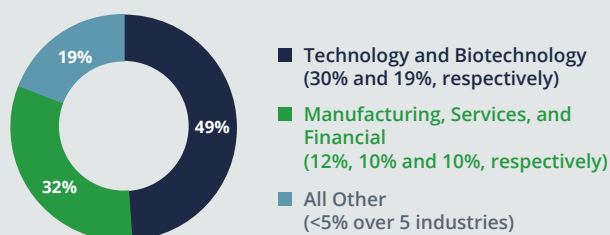
As of December 2019, there were approximately 600 open cases with 85% of them having been filed in the past three years (2017 through 2019). Here are some additional details about the companies involved as well as some case information to help provide a better perspective as to what to expect in the near term for securities class action litigation outcomes.

A Snapshot of SCA Filings in 2019

Distribution across market caps:



Distribution across industries:



25%

of the suits involve companies that went public in the last five years

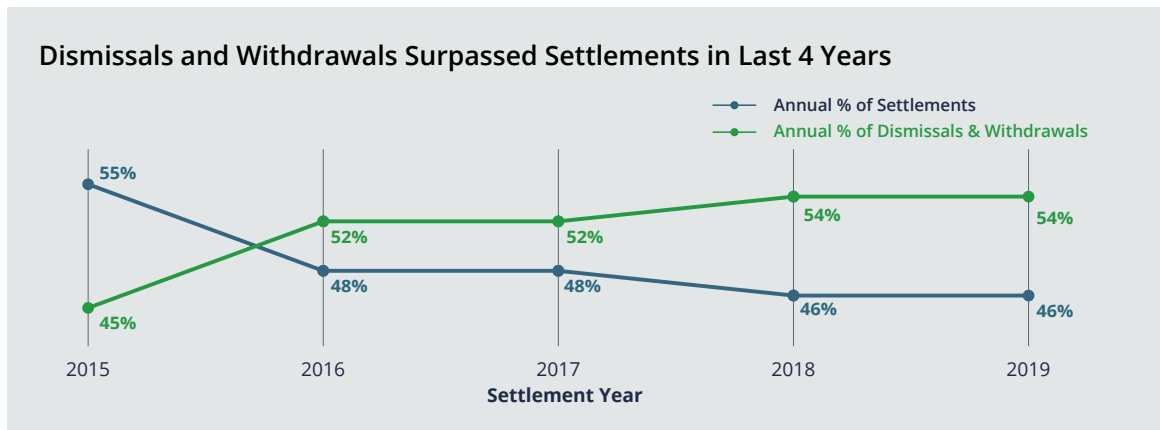
13%

of the total suits are being litigated in state courts

Withdrawals and Dismissals versus Settlements

Settlements are, on average, occurring within 3.1 years, with dismissals/withdrawals occurring within 1.7 years.

For the past four years, we have seen the annual dismissals/withdrawals rate surpass the annual settlement rate, as illustrated below:



This would seem to be a positive trend since dismissals and withdrawals mean that the plaintiffs failed in their effort to extract a lucrative settlement from the issuers. This trend speaks favorably to issuers' efforts to defend themselves against securities class actions.

On the other hand, the increase in total settlement dollars being paid out and the trend upwards in the median dollar amount for settlements means that the insurance carriers are being asked to cover settlements that could, on the conservative side, involve upwards of \$7 billion within the next three years (excluding defense costs). The \$7 billion figure does include settlements over \$1 billion. To give some context to this exclusion, consider that in the last 10 years there were five settlements of over \$1 billion paid out for an aggregate of \$9.6 billion. While carriers rarely cover the lion's share of the \$1 billion+ settlements, companies with these types of settlements would typically have purchased insurance programs with hundreds of millions of dollars in coverage, all of which would have been exhausted in the course of this sort of high-stakes litigation.

What Can We Expect in 2020?

While 2018 was thought to have been a pacesetter year, 2019 surpassed 2018 in both filings made and settlement dollars paid out. It also highlighted the new reality that IPO companies are having to deal with when being sued: If their trading price drops below their IPO issuance price, they are almost guaranteed to be sued in both federal and state courts simultaneously for Section 11 violations, which brings with it the added burden of rising defense costs.

What can we expect for 2020? Unless there is some relief in the courts and/or legislatures to blunt the impact of the *Cyan* decision, and the entrance into the D&O insurance market of more capacity, we expect to see a continuation of the high D&O insurance premium costs for public company issuers suffered in 2019. Given the limited underwriting capacity available in the D&O market today—after all, these levels of losses aren't exactly making the D&O insurance market attractive to carriers—there is a very low probability that companies will see any relief in their premium costs in the near future, and, certainly not in 2020.

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