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## DATABOX™ 2023 YEAR-END REPORT

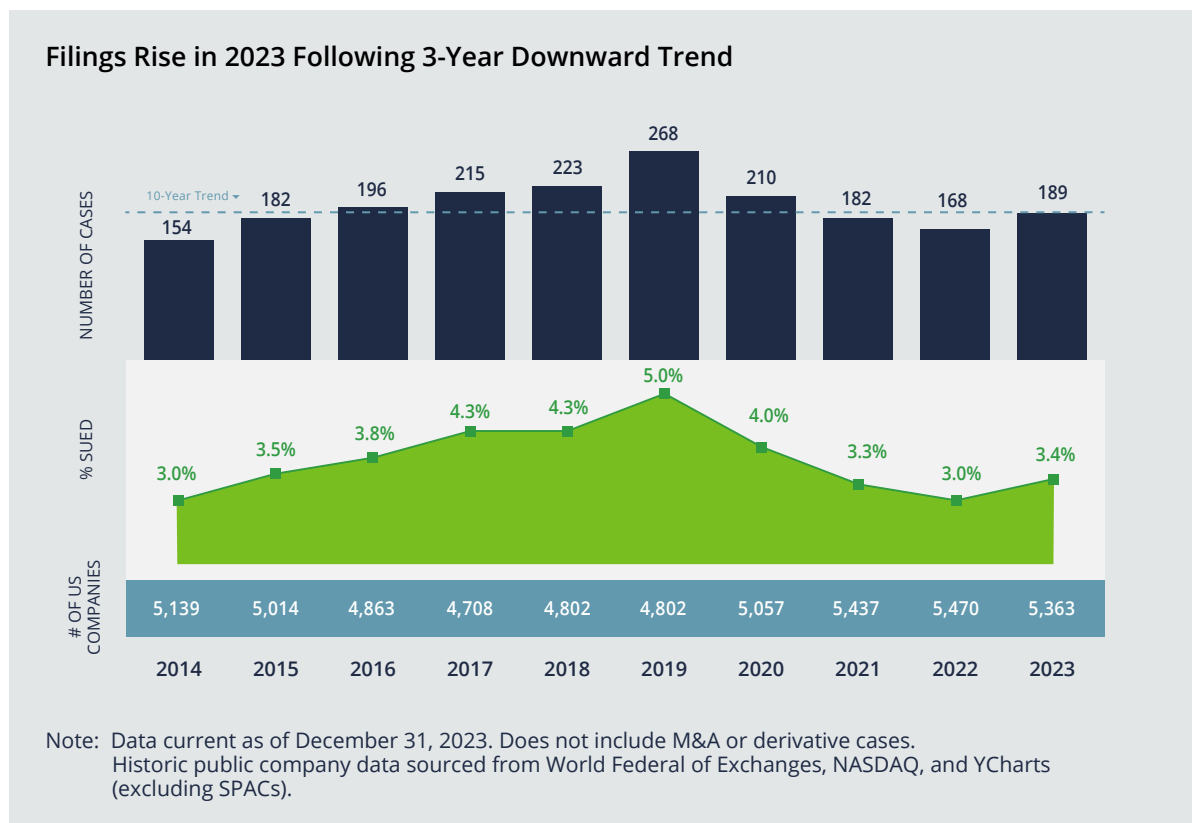
*Woodruff Sawyer's D&O Databox™ Year-End Report provides insights about securities class action activities, developments, and historical trends—sourced from Databox, our proprietary database and leading resource for securities class action data over the last 30+ years. Databox powers our analysis of the D&O litigation environment and enables public companies—and those looking to IPO—to assess and mitigate their management liability risks with more precision and clarity.*

*This edition of the Databox Year-End Report reviews 2023 results for securities class-action filings and settlements and provides insights into 2024.*

# Securities Class Action Filings: A Rise in 2023

After three years of decreasing class action filings, activity increased in 2023. Last year, 189 cases were filed as compared to 168 cases filed in 2022—a 13% increase. This increase occurred despite the slowdown in companies going public through IPOs and de-SPAC mergers. While the state of the economy has contributed to fewer filings in some areas, it has also led to filings due to elevated inflation and higher interest rates. The big news, however, is the size of the 2023 settlements.

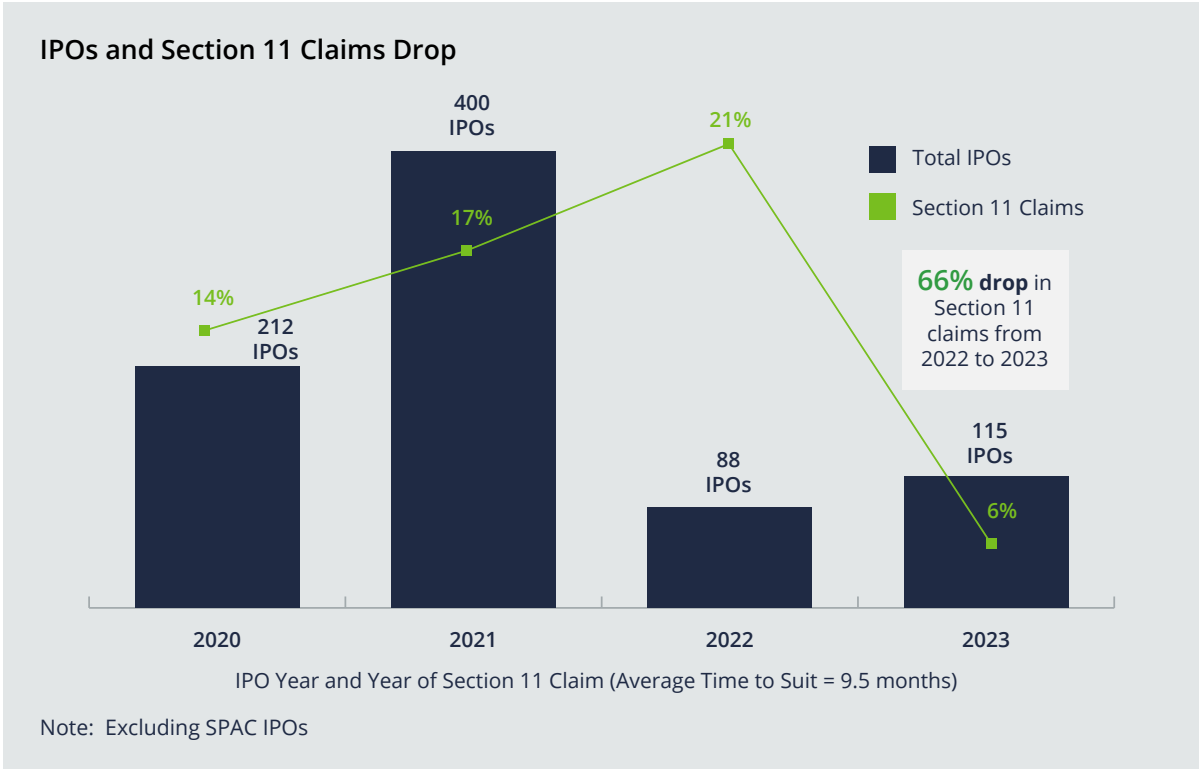
This edition of the *Databox 2023 Year-End Report* reviews filing and settlement activities for the year.



## What Happened to Filing Activity in 2023?

### IPO Companies: Decreases in IPOs and Section 11 Claims

No surprises here—with fewer companies going public, fewer IPO companies were being sued. Peak activity for companies going public occurred in 2021, with 400 companies debuting on US stock exchanges (excluding SPAC IPOs). IPOs then fell off a cliff, dropping to the lowest level in 2022 since 2008, with only 88 companies going public. The following year, 2023, was slow as well, with just 115 IPO companies, a 36% drop from the 10-year average of 180 IPO companies per year. The following chart illustrates the decrease in companies going public and the inevitable drop in Section 11 claims (in which they are sued an average of 9.5 months after going public).



And yet, the drop in Section 11 claims **did not lead to a decrease in the total number of filings in 2023**. Let’s take a look at another area where filing activity has been and still continues to be of concern—de-SPACs.

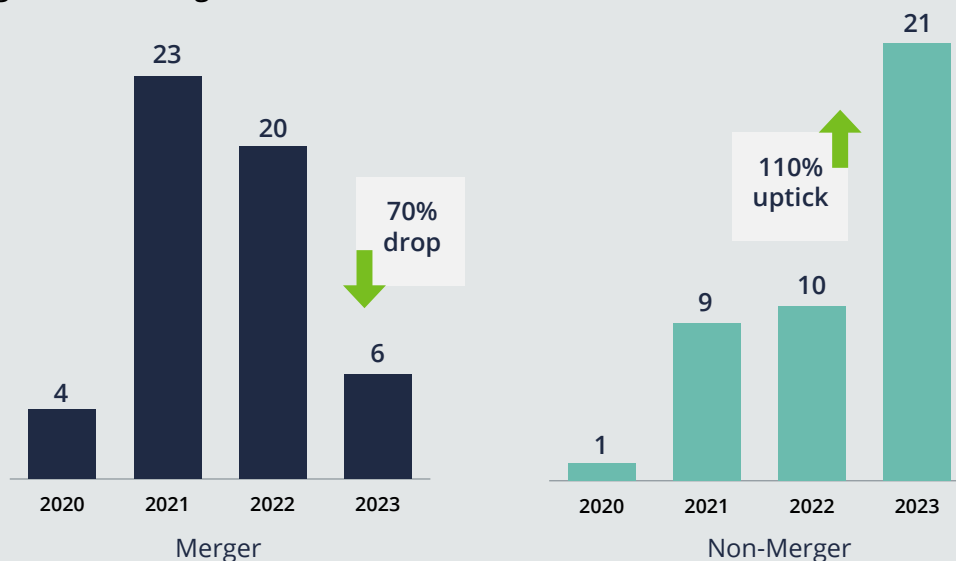
### SPACs/De-SPACs: De-SPACs Continue to Be Targeted for Lawsuits

The SPAC IPO market was booming in 2021. In that year, 61% of all IPOs were SPAC IPOs (612 total SPAC IPOs). There has been no litigation against SPACs for their IPOs. Filings against de-SPACs, however, is a whole other story. Filings against de-SPACs as a percentage of all suits filed each year are shown below:

De-SPAC Suits Per Year (% of Per Annum SCA Suits)			
2020	2021	2022	2023
2%	18%	17%	14%

As SPACs found acquisition opportunities and closed on their mergers (the “de-SPAC process”), the SPAC/de-SPAC companies came under the scrutiny of the Securities & Exchange Commission (SEC) due to the explosive growth in SPAC activity. Shareholders filed lawsuits alleging that the disclosures pertaining to the merger and operations of the de-SPAC were misleading. However, while de-SPAC mergers have fallen off from 199 in 2021 to 98 in 2023—a 47% drop—the filing rates against de-SPACs have remained steady (see the chart above). In 2023, the nature of the suits changed from merger-focused to the business activities of the de-SPAC, where disclosures about their revenue growth and/or operations were alleged to have been misleading. The breakdown in merger versus non-merger claims for securities class actions from 2020 to 2023 are shown on the next page:

## Securities Class Actions De-SPACs: Merger vs. Non-Merger



Note: Companies sued within three years from de-SPAC merger closing date.

Because of their short operating history as a public company and the challenges to manage and meet the expectations of shareholders and analysts, de-SPACs have been under as much scrutiny as a traditional IPO company. Unfortunately for de-SPACs, they are being sued more often than IPO companies. The five-year average for IPO companies being sued is 13% versus 18% for de-SPACs (based on the year they IPOed or de-SPACed). So while we are seeing fewer lawsuits against IPO companies, the de-SPACs have filled in the gap for filing activity against newly public companies in 2023.

## The Lasting Effects of COVID-19

In 2023, there continued to be ongoing claims linked to the COVID-19 pandemic, which comprised 6% of total filings. There were 11 cases in 2023 versus 21 cases in 2022. The drop in COVID-19-related filings is to be expected as we move further away from the onset of the pandemic in 2020.

## Emerging Trends in Filing Activity

### Bank Failures

The economy affected filing activity in 2023. Concerns about a recession and spikes in interest rates, fortunately, did not come to pass for the US economy in 2023. However, the financial industry saw some turmoil in the spring of 2023 when certain banks were dealing with the strain of higher interest rates that led to concerns about their liquidity and viability as ongoing concerns. Bank takeovers and mergers/acquisitions ensued. Beginning in March 2023, Credit Suisse, SVB Financial Group, Signature Bank, and First Republic Bank were sued for their misrepresentation of the solidity of their financials and

### SPAC Risk Update with Doug Ellenoff: What to Expect in 2024 >>

SPAC experts Yelena Dunaevsky and Doug Ellenoff review SPAC activity in 2023 and discuss what to expect this year.

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their failure to disclose the true risks they were encountering as interest rates rose and the cryptocurrency market crashed. A total of eight cases have been filed in 2023 related to banking liquidity issues. While this only comprises 4% of the cases filed in 2023, we expect the strain on the financial services industry to continue. For example, the effects of the COVID-19 pandemic on the financial industry have yet to be fully borne out when you consider that the commercial real estate industry continues to deal with low occupancy rates that may lead to loan defaults.

### Macroeconomic Concerns

As the long-tail impact of the COVID-19 pandemic and other economic uncertainties continues to weigh on the financial industry, companies in other industries have been sued as a result of the stresses on the economy. In 2023, 5% of filings were against companies that had to deal with the impact of the costs of inflation, higher interest rates, supply chain disruptions, and/or labor supply shortages on their revenue growth. A sampling of the companies are as follows:

Entity	Industry	Type of Business
Dutch Bros Inc.	Trade/Retail	Drive-thru coffee shops
Expensify, Inc.	Technology	Cloud-based management software platform
Generac Holdings Inc.	Manufacturing	Power generation equipment
Plug Power Inc.	Technology	Hydrogen fuel cell systems
Tandem Diabetes Care, Inc.	Technology	Insulin pumps and disposable infusion sets
United Natural Foods, Inc.	Trade/Retail	Wholesale distributor of specialty food and non-food products

### A Movement in Size of Companies Sued

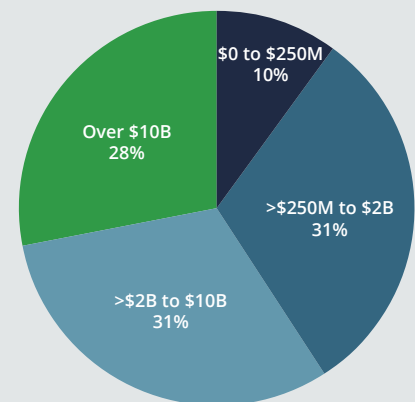
The market cap size of companies is also worth noting when reviewing the mix of companies being sued. The following is a breakdown of suits filed by size of company and how they compared to 2022:

#### 2023 Filings by Market Cap: An Increase for Mid-Cap Companies

Market Cap Range	2022	2023	% Change
\$0 to \$250M	12%	10%	-2%
>\$250M to \$2B	36%	31%	-5%
>\$2B to \$10B	23%	31%	+8%
>\$10B	29%	28%	-1%

Notable movements occurred in the small-cap range (>\$250M to \$2B) and mid-cap range (>\$2B to \$10B) of companies—an upward shift in filings against companies of larger size.

\$0 to \$2B ranges = 41% (Micro- and small-cap companies)  
>\$2B and over = 59% (Mid- and large-cap companies)



**45% of Companies Sued Have Been Trading on US Exchanges for 10+ Years**

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### What to Expect in 2024: An Economic Update with Nasdaq>>

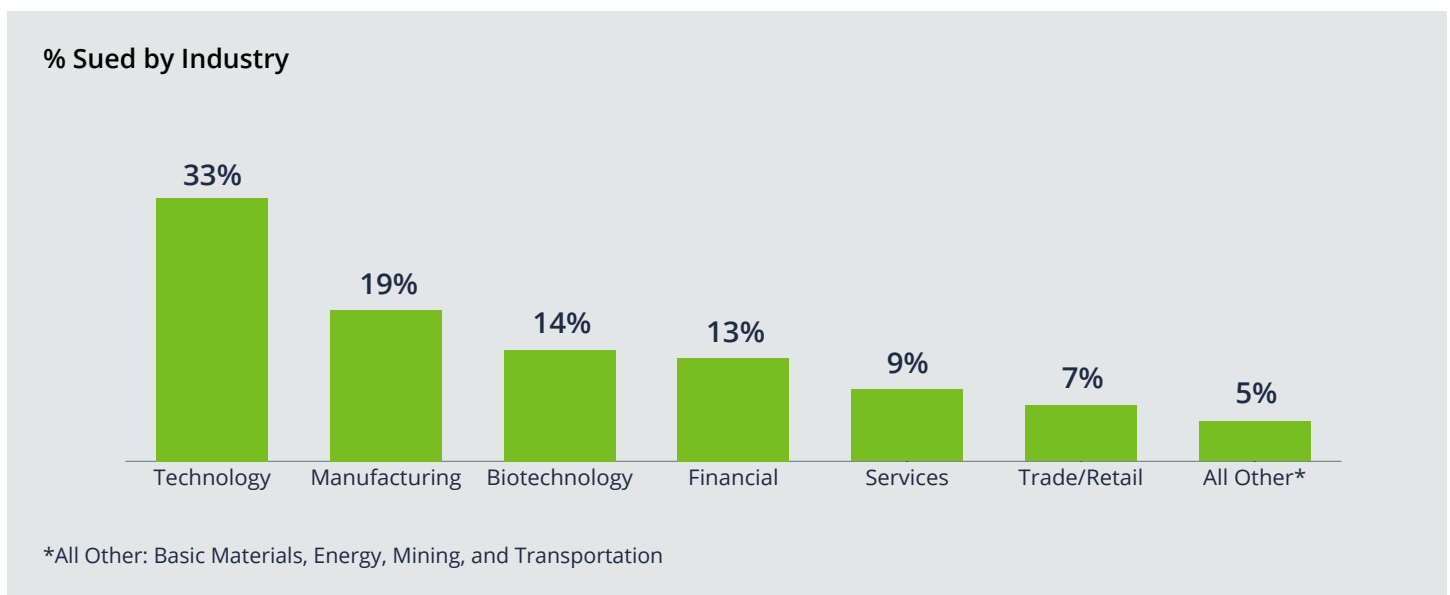
We talk to Nasdaq about inflation, interest rates, the IPO pipeline for 2024, and how IPO companies can get D&O insurance for a good price.

While almost half of these companies have been mature public companies for more than 10 years, it is worth noting that 40 of the companies sued were S&P 500 companies (22% of filings or 8% of the S&P 500 companies). As noted in the pie chart on the previous page, over a quarter of the filings involved large market companies. A sampling of these large companies with high profiles in the public arena is shown below:



## Filings by Industry

The following chart sets forth the breakdown of filings by industry:



The top five industries are shown below with highlights of notable movements.

Top Five Industries Sued			
2022		2023	
Technology	33%	Technology	33%
Biotechnology	15%	Manufacturing	19%
Manufacturing	13%	Biotechnology	14%
Services	13%	Financial	13%
Trade/Retail	12%	Services	9%

**Notable Movements:**

- Manufacturing moved up to second place. Sixteen companies had market caps in the >\$2B to \$10B range (mid-cap companies). Twelve of the 37 companies were de-SPACs.
- Financial moved into the top five list, with 24 companies sued that were involved in banking, insurance, fintech, REIT, or brokerage/market maker services. Half of the 24 suits were filed against banks.

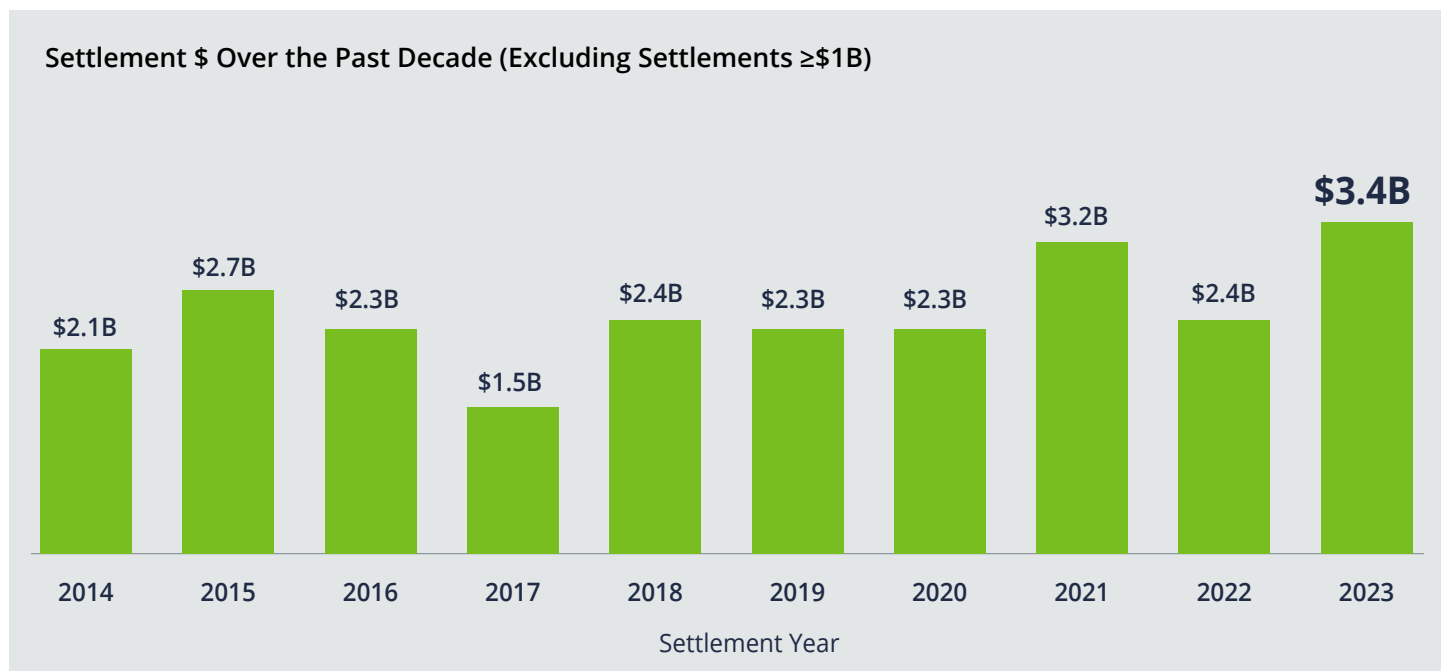
## Foreign-Based Companies: A Steady Rate of Filings

Filings against foreign-based companies trading on US exchanges remained steady with just a 1% drop from 2022 to 2023. Of the 2023 filings, 20% were against foreign-domiciled companies as compared to 21% in 2022. In 2023, 38 suits were filed against foreign companies located in 14 countries. The charts below indicate the size of these companies and where they are headquartered.

Foreign Filings by Market Cap		Foreign Locations by Region			
Market Cap Range	# of Suits	Americas	Asia Pacific	Europe	Middle East & Africa
\$0 to \$250M	6	Bermuda	China	France	Israel
>\$250M to \$2B	12	Brazil	Hong Kong	Germany	
>\$2B to \$10B	10	Canada	Japan	Ireland	
>\$10B	10	Uruguay	Philippines	Switzerland	
			Singapore	United Kingdom	

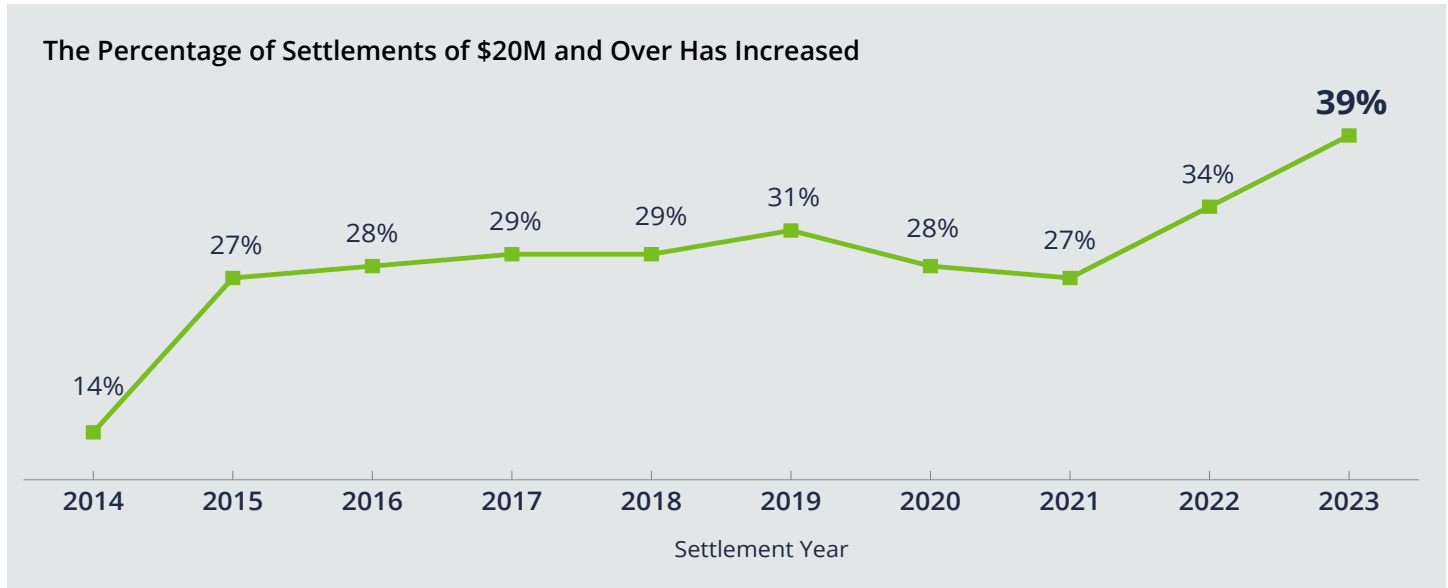
## Settlements in 2023: A Record-Breaking Year

In 2023, 93 settlements were paid out for an annual aggregate of \$4.4 billion (including a \$1 billion settlement). This represents the highest annual amount paid out in the last decade. The following chart shows total settlement dollars from 2014 to 2023, excluding settlements \$1 billion and over.

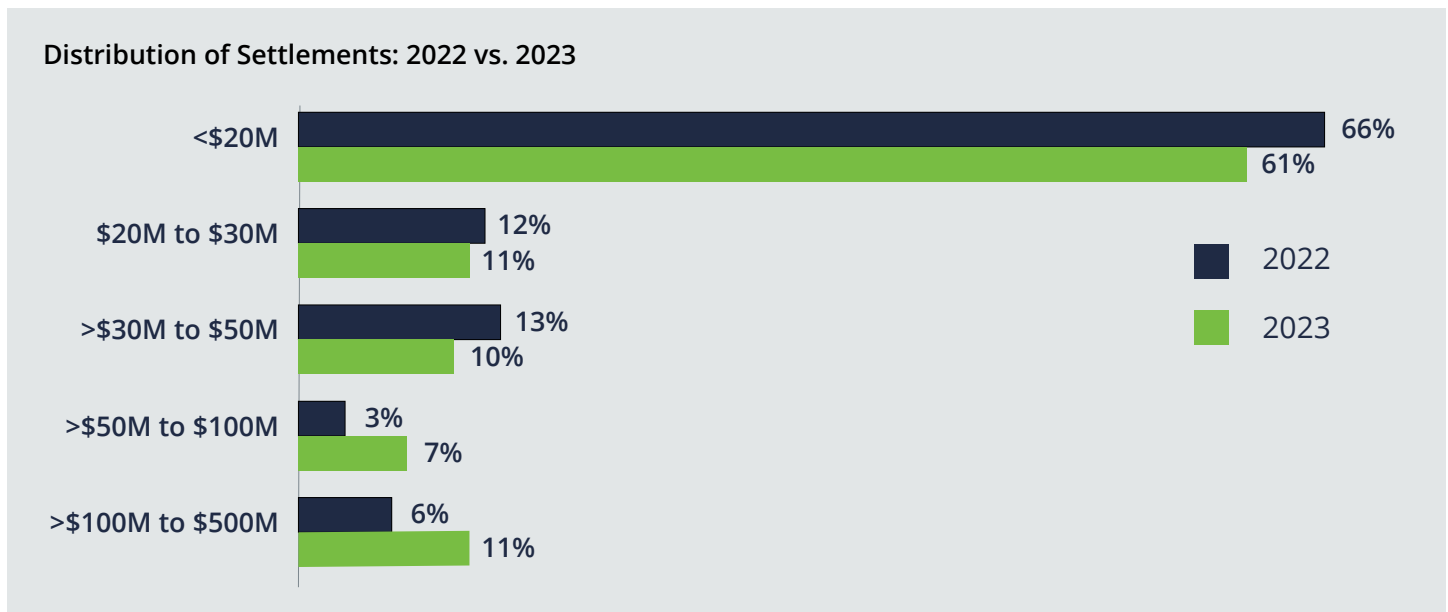


## Distribution of Settlements

To understand how 2023 became a record-breaking year for settlement dollars, the chart below shows a breakdown of settlements \$20M and over paid out over the last 10 years. It reveals a growing number of large-dollar settlements.



The percentage of claims settling for \$20M has hovered around 30% or less for all 8 years prior to 2023. In 2023, however, the percentage shot up to 39%. Below is a further breakdown of settlement dollars paid out in 2023 as compared to 2022.





As further testament to the severity of dollars paid out in 2023, the following list of top 10 settlements indicates that all the settlements were over \$100M, a first-time occurrence in the last 10 years.

**Top 10 Settlements in 2023**  
**(Average Time to Settlement = 4.5 years)**

Entity	Suit Year	Industry	Cash Settlement Amount	Case Notes
Wells Fargo & Company	2020	Finance	\$1B	Failure to satisfy the terms of Consent Orders entered into in 2018 due to a series of scandals plaguing the bank since 2016, in which the company was to establish safeguards necessary to protect consumers
The Kraft Heinz Co.	2019	Manufacturing	\$450M	Post-acquisition accounting issues that led to a restatement of financials and a \$15.4B write-down of certain company trademarks
Wells Fargo & Company	2018	Financial	\$300M	Forced sales of over 800,000 auto insurance policies to consumers who financed their car loans through Wells Fargo
Walgreens Boots Alliance, Inc.	2018	Trade/Retail	\$192.5M	Misrepresentation of FTC approval for merger with Rite Aid that ultimately led to an acquisition of assets instead of the planned merger
Envision Healthcare Corp.	2017	Services	\$177.5M	Misrepresentation of revenue growth and alleged improper billing practices
Exelon Corporation	2019	Energy	\$173M	Bribery scheme involving its lobbying practices in Illinois to obtain support for utility rate increases
Zoom Video Communications, Inc.	2020	Technology	\$150M	Misrepresentation about its data privacy practices and security measures
Alexion Pharmaceuticals, Inc.	2016	Technology	\$125M	Fraudulent sales tactics to boost sales. FCPA violation settlement of \$21M.
Cardinal Health, Inc.	2019	Trade/Retail	\$109M	Post-merger integration issues pertaining to inventory controls about unsellable or expired medical devices that led to a \$1.4B goodwill impairment charge, weaker quarterly earnings, and a reduction in 2018 guidance
Micro Focus International plc (State court: CA)	2018	Technology	\$107.5M	Section 11 M&A claim— misrepresentation of potential revenue growth regarding acquisition of HP Enterprise assets for \$8.8B

The effect of these large dollar settlements has been to move up the average median and 75th percentile in 2023. The 2023 median is up 44% from the average of the 10-year median, while the 75th percentile is up 54% from the average of the 10-year 75th percentile. Below is a comparison of these measurements for the 10-year, 2023, 2022, and 2021 settlement periods.

### Average & Median Settlement \$ Are Trending Upwards: 2023 Compared to Prior Years

	10 Years (2014 to 2023)	2023	2022	2021
Settlement \$	\$25B	\$3.4B	\$2.4B	\$3.2B
Average	\$30M	\$37M	\$26M	\$32M
Median	\$9M	\$13M	\$12M	\$11M
75th Percentile	\$24M	\$37M	\$24M	\$27M

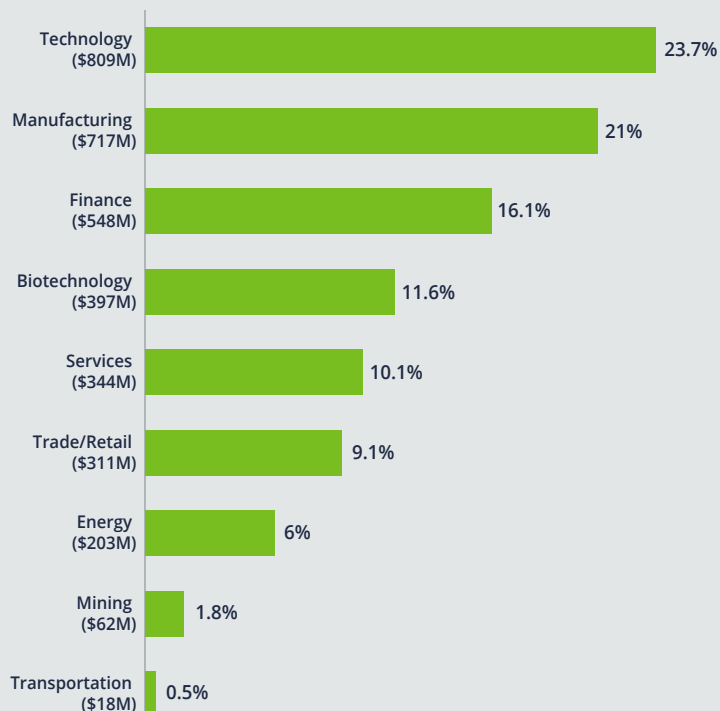
Note: Excluding settlements of \$1B and over.

## Settlements by Industry

The following is a breakdown of settlement dollars by industry:

### Percentage of Settlement \$ by Industry in 2023

(excluding one settlement of \$1B by Wells Fargo)



### Top Settlement in Each Industry

\$150M – Zoom Video Communications, Inc.

\$450M – The Kraft Heinz Co.

\$300M – Wells Fargo & Company

\$125M – Alexion Pharmaceuticals, Inc.

\$177.5M – Envision Healthcare Corporation

\$192.5M – Walgreens Boots Alliance, Inc.

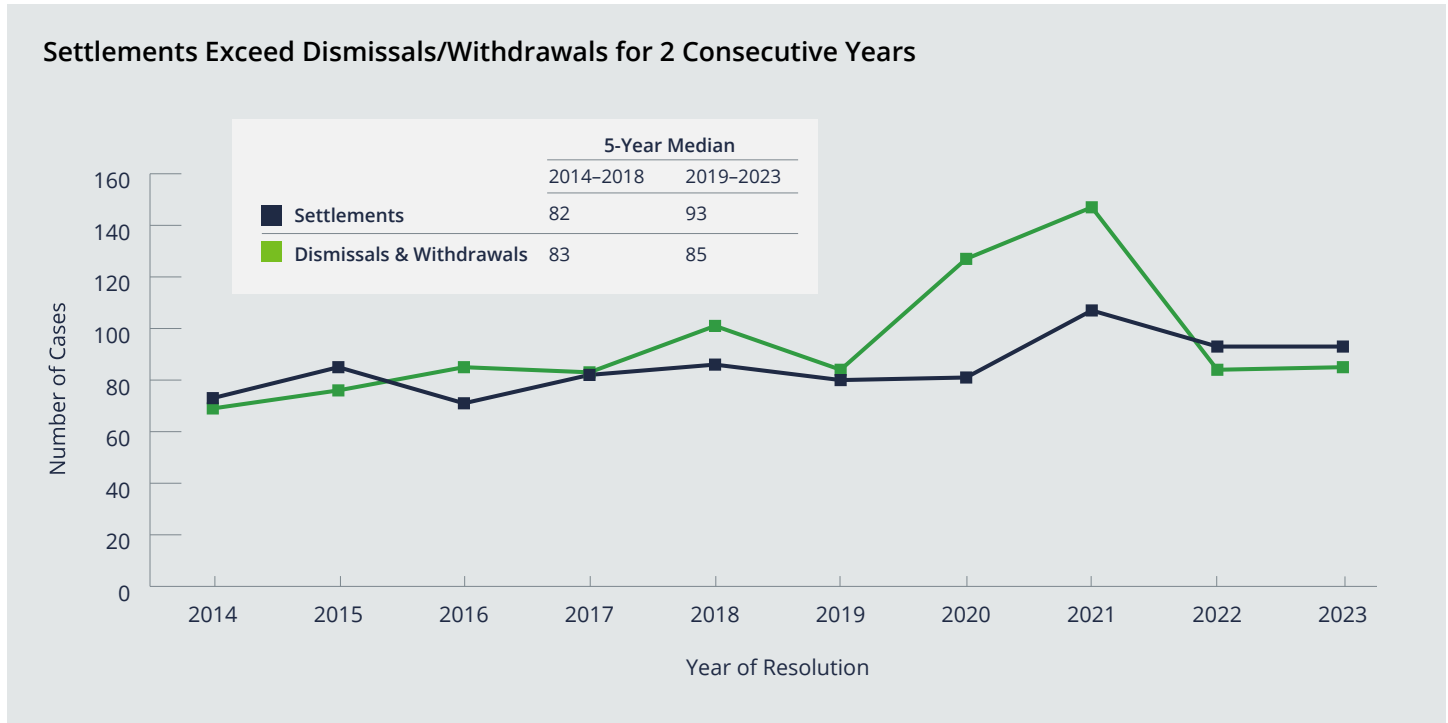
\$173M – Exelon Corporation

\$21M – Gatos Silver, Inc.

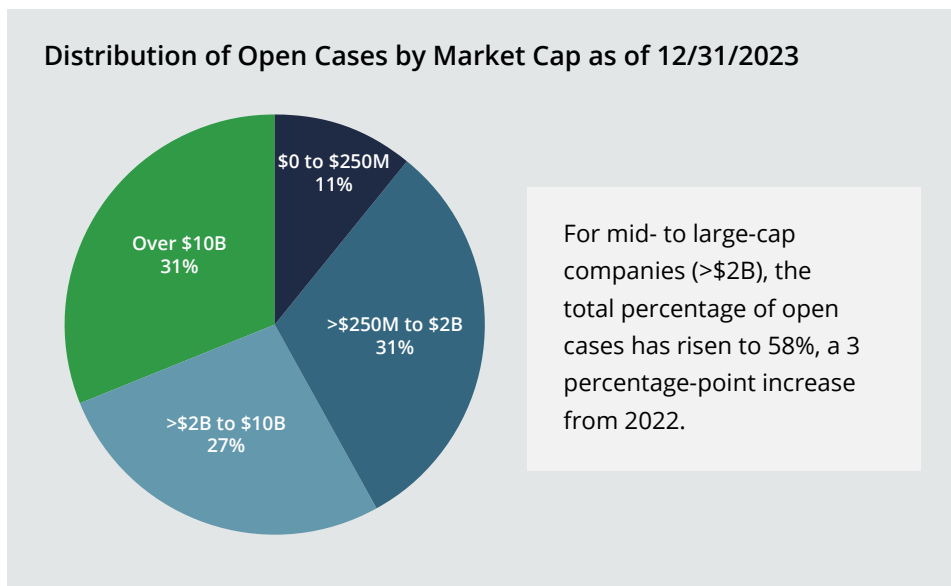
\$13M – US Xpress Enterprises, Inc.

## Settlements vs. Dismissals/Withdrawals

The number of settlements exceeded dismissals/withdrawals in 2023—93 versus 85, respectively. This is the second year in a row this has occurred, as shown in the chart below for case dispositions in the last decade.



At the end of 2022, there were 480 open cases, a 4% net increase from open cases in 2021. The following is a breakdown of the open cases by market capitalization.



## Looking to 2024: Past Results Inform Future Concerns

As predicted in our [Databox 2022 Year-End Report](#), the economic outlook had an impact on the nature and number of filings in 2023:

- There were fewer IPOs and fewer lawsuits. However, fewer de-SPAC mergers did not result in a drop in suits filed. The de-SPAC merger became less of an issue while the subsequent performance of a de-SPAC invited more lawsuits.
- Banks that were vulnerable to the rise in interest rates and/or the cryptocurrency market decline led to bank failures and a spate of lawsuits.
- Macroeconomic factors affected companies that led to higher costs and lower revenue growth. Commodity inflation, higher supply chain costs, rising interest rates, management of labor costs, softening of consumer/user demand, and shifting consumer trends were aspects for the basis for complaints being filed.

These activities contributed to the increase in filings along with a robust number of filings against mid- to large-cap companies. All this filing activity was accompanied by the record amount of settlement dollars paid out in 2023. The size and quantity of larger settlements contributed to a 42% increase over 2022 dollars paid out in 2023 of \$3.4 billion (as compared to \$2.4 billion in 2022 and excluding a \$1B settlement in 2023).

### What to Expect in 2024

A range of factors impact the growth of world economies and public companies, which in turn could lead to stock price drops and class action lawsuits. These factors include:

- Inflation and interest rates
- Fiscal deficit concerns
- Labor market issues
- Consumer spending habits
- Supply chain bottlenecks/restructuring
- Housing activity and commercial sector pressures
- Rate of economic growth
- Geopolitical risks

All these concerns work together to create more complications for public companies, and with the 2023 securities class action activities to look back on, the outlook for 2024 is for even more uncertainty for the D&O insurance market. Filings against established, high-worth companies have not abated and, in fact, grew in 2023. Moreover, while settlement and severity rates have reached a decade high, there is no indication that we have reached a peak.

Nevertheless, as noted in our [Looking Ahead to 2024: A Guide for D&O Insurance Renewals](#) published in September 2023, the upsides of a soft insurance market will continue into 2024—albeit at a more modest rate. However, considering the recent securities class action filing and settlement activity, it remains to be seen how much longer prices can keep decreasing.

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