IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

ROBERT HURWITZ, on Behalf of Himself and All Others Similarly Situated, Plaintiff, v. ERIC MULLINS, CHARLES W. ADCOCK, JONATHAN C. FARBER, TOWNES G. PRESSLER, JR., JOHN A. BAILEY, JONATHAN P. CARROLL, SCOTT W. SMITH, RICHARD A. ROBERT, W. RICHARD ANDERSON, BRUCE W. MCCULLOUGH, and LOREN SINGLETARY, Defendants.	)	Case No.: 1:15-cv-00711-MAK CLASS ACTION

DECLARATION OF STEPHEN J. ODDO IN SUPPORT OF CLASS REPRESENTATIVE'S MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE'S SERVICE AWARD

I, Stephen J. Oddo, declare as follows:

1. I am a partner in the firm of Robbins Arroyo LLP ("Robbins Arroyo"). My firm was appointed by the Court as Lead Class Counsel for Class Representative Robert Hurwitz ("Class Representative" or "Hurwitz") and the Class in the above-captioned action ("Action").[1] D.I. 120. I am a member of the bar of the State of California and have been admitted *pro hac vice* to appear before this Court in this Action.

[1] All capitalized terms that are not defined herein shall have the same meanings as set forth in the Stipulation of Settlement [D.I. 174], the Addendum to the Stipulation of Settlement [D.I. 182] ("Addendum"), and the Second Addendum to the Stipulation of Settlement [D.I. 188] ("Second Addendum") (collectively, the "Stipulation").

2. I make this declaration in support of Class Representative's Motion for (1) Final Approval of Class Action Settlement and Plan of Allocation (the "Settlement Motion"); and (2) an Award of Attorneys' Fees and Expenses and Class Representative's Service Award (the "Fee Motion"), filed concurrently herewith.

3. I have been actively involved in the prosecution and resolution of this Action since its inception in August of 2015. I am familiar with its proceedings and have knowledge of the matters set forth herein based upon my participation in all material aspects of this Action and my supervision of, or communications with, other lawyers and staff assigned to this matter. This declaration was prepared with the assistance of other lawyers at my firm and reviewed by me before signing. The information contained herein is believed to be accurate based on what I know and what I have been told by others.

4. The purpose of this declaration is to set forth the basis for and background of the Action, its procedural history, and the negotiations that led to the Settlement. This declaration demonstrates why the Settlement is fair, reasonable, and adequate and why the Settlement Motion and the Fee Motion should be granted.

I. PRELIMINARY STATEMENT CONCERNING SETTLEMENT

5. The Settlement, which this Court preliminarily approved in its Order dated July 27, 2018 [D.I. 191-192] (the "Preliminary Approval Order"), provides for the payment of $8,000,000 in cash for the benefit of the Class to settle all claims asserted in this Action and the release of all related claims by Class Representative and Class Members against Defendants and their affiliated Persons and entities.

6. The Settlement is an excellent result and was the product of extensive and diligent litigation efforts and settlement negotiations.

7. As set forth more fully below, Class Representative might not have achieved such a meaningful recovery for the Class following continued litigation, and even if he ultimately prevailed at trial, any judgment would inevitably be subject to an appeal, and any potential recovery for the Class would be substantially delayed. Defendants' asserted defenses presented numerous risks concerning Class Representative's ability to establish liability, as well as to prove the amount of damages suffered by Class Representative and the Class. In spite of these obstacles, Lead Class Counsel obtained a highly favorable Settlement that will result in an immediate recovery for the Class, and eliminates the risk of continued litigation under circumstances where a favorable outcome was not assured.

8. This Action has been vigorously litigated since its inception in August of 2015, and the Settlement was reached only after Lead Class Counsel, with the assistance of Liaison Class Counsel, had: (i) reviewed and analyzed documents publicly filed with the U.S. Securities and Exchange Commission ("SEC"); (ii) reviewed other publicly available information, including press releases, news articles, and other public statements issued by or concerning LRR Energy, L.P. ("LRE"), Vanguard Natural Resources, LLC ("Vanguard"), and certain of the Defendants, as well as research reports issued by financial analysts concerning the aforementioned companies; (iii) researched applicable law governing the claims and potential defenses asserted in this Action; (iv) consulted with damages, industry, and causation experts; (vi) prepared a fact-intensive Amended Class Action Complaint (the "Amended Complaint") [D.I. 15]; (vii) successfully opposed Defendants' motion to dismiss [D.I. 37-38]; (viii) successfully defeated Defendants' motions for summary judgment on Class Representative's individual securities law claims [D.I. 119]; (ix) successfully certified the Class over Defendants' opposition [D.I. 120]; (x) propounded written discovery and analyzed tens of

thousands of pages of documents produced by Defendants and various third-parties; (xi) deposed ten witnesses who played a role in the Acquisition and/or the administration of Vanguard's credit agreement; (xii) defended the deposition of Class Representative; (xiii) retained three leading industry and financial experts to evaluate evidence and assist with the computation of damages and who exchanged merits expert reports; and (xiv) engaged in extensive arm's-length settlement negotiations through the mediation process, which included engaging the services of a mediator, preparing detailed mediation statements, and participating in a full-day mediation session in New York, which culminated in the Settlement.

9. Accordingly, it is respectfully submitted that the Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate, Class Counsel should be awarded 30% of the Settlement Amount and receive reimbursement for their litigation expenses plus interest earned on both amounts at the same rate as earned by the Settlement Fund, and Class Representative should be compensated for his time and effort representing the Class via the Service Award.

II. SUMMARY OF THE LITIGATION

A. Commencement of the Action

10. This federal securities class action arises out of the 2015 acquisition of LRE by Vanguard in a unit-for-unit transaction that was announced on April 20, 2015 (the "Acquisition").

11. On August 18, 2015, Hurwitz filed a class action complaint on behalf of the public unitholders of LRE against the LRE Defendants,[2] Vanguard, and Lighthouse Merger Sub,

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[2] "LRE Defendants" refers to Eric Mullins, Charles W. Adcock, Jonathan C. Farber, Townes G. Pressler, Jr., John A. Bailey, and Jonathan P. Carroll.

LLC ("Lighthouse Merger Sub"), asserting violations of sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and SEC Rule 14a-9 promulgated thereunder, in connection with the Acquisition. D.I. 1.

12. On January 20, 2016, the Court appointed Hurwitz as Lead Plaintiff, Robbins Arroyo as Lead Counsel, and Cooch and Taylor, P.A. ("Cooch and Taylor") as Liaison Counsel for the putative class. D.I. 11.

13. On June 22, 2016, Hurwitz filed the Amended Complaint, which is the operative complaint in this Action. D.I. 15. The Amended Complaint added LRE and the individual VNR Defendants[3] as defendants, and alleged violations of sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder and sections 11 and 15 of the Securities Act of 1933 (the "Securities Act"). Specifically, as discussed herein, the Amended Complaint alleged that the definitive joint registration statement/proxy statement ("Proxy") disseminated by Defendants in connection with the vote on the Acquisition failed to disclose material information to LRE's public unitholders regarding Vanguard's then-existing financial condition.

1. Factual Allegations Pled in the Amended Complaint

14. LRE was a Delaware limited partnership formed in April 2011 to operate, acquire, exploit, and develop oil producing and natural gas properties in North America. ¶40.[4] On April 20, 2015, Vanguard and LRE announced they had agreed to the Acquisition. ¶4. Under the terms of the deal, Vanguard agreed to acquire all of LRE's outstanding common units at an

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[3] "VNR Defendants" refers to Scott W. Smith, Richard A. Robert, W. Richard Anderson, Bruce W. McCullough, and Loren Singletary.

[4] Citations to ¶ or ¶¶ refer to paragraphs in the Amended Complaint. D.I. 15.

exchange ratio of 0.55 Vanguard common units per LRE common unit, as well as assume all of LRE's outstanding debt. *Id.*

15. Prior to the Acquisition, LRE demonstrated impressive financial performance despite a significant downturn in commodity prices, and continued to prove to be a reliable source of cash distributions for investors. ¶¶42-43. In fact, LRE's financial condition allowed it to provide unitholders with consecutive increases in per-unit cash distributions despite the largest downturn in oil and gas prices in at least the last decade. ¶44. The company's ability to execute on its "distribution strategy" and deliver strong performance was the result of LRE's stated commitment to a conservative balance sheet with minimal levels of debt. ¶45.

16. To obtain necessary unitholder approval for the Acquisition, Defendants prepared and disseminated the Proxy to LRE's former unitholders, which focused on Vanguard's distributions to unitholders and other purported benefits to be realized by the Acquisition. ¶58. The Proxy stated that LRE unitholders should vote in favor of the Acquisition because it would "provide consistent and predictable cash flow volumes that will enable Vanguard to continue to make consistent monthly cash distributions to its unitholders and, over time, improve equity valuation." *Id.* The Proxy also touted "Transaction Benefits" that included "Enhanced Distribution stability, coverage, and growth potential." ¶47.

17. However, the Proxy omitted and/or failed to disclose material information concerning Vanguard's then-existing financial condition. In particular, the Proxy failed to disclose that as of March 31, 2015, Vanguard had already determined that "it expected to not be in compliance with the Consolidated Leverage Ratio in certain future periods." *Hurwitz v. LRR Energy*, *L.P.*, 241 F. Supp. 3d 491, 503 (D. Del. 2017). Also undisclosed was the fact that—based on Vanguard's "then-current" financial projections—the company's debt to earnings

before interest, taxes, depreciation, and amortization ratios resulted in violations of ***existing*** debt covenants contained in Vanguard's credit agreement. ¶52. Defendants also failed to disclose the consequences that Vanguard's existing debt servicing issues would have on its payment of cash distributions to unitholders or its ability (or inability) to realize other benefits of the Acquisition that were touted to LRE's former unitholders. ¶57.

18. The Acquisition closed on or about October 5, 2015 and, in connection with the consummation of the transaction, LRE's former public unitholders received 0.55 Vanguard common units for each LRE common unit they previously owned. ¶4.

19. On December 18, 2015, just weeks after the close of the Acquisition, Vanguard disclosed that it was slashing the payment of cash distributions to its unitholders (which now included LRE's former public unitholders) by more than 75%, from $1.41 per common unit to just $0.36 per common unit (annualized). ¶¶7, 60. At the time the distribution cuts were announced, Vanguard disclosed that this action was necessary in order to "pay[] down debt under Vanguard's revolving credit facility." ¶61.

20. Just a few months later, on March 4, 2016, Vanguard announced that it was suspending all cash distributions to unitholders. ¶62. In connection with the announcement, Vanguard acknowledged that it was suspending distributions in order to "reduc[e] our debt in 2016." ¶62. Vanguard never resumed payment of unitholder distributions.

21. These developments caused the value of the Vanguard common units received by LRE's former public unitholders to plummet by more than 91.7%. ¶8. On April 20, 2015, the day the Acquisition was announced, the consideration to be received by LRE unitholders was valued at $8.93. *Id.* On June 22, 2016, the date the Amended Complaint was filed, the consideration received by Class Representative and the Class was valued at less than $0.70.

B. Procedural History Following Commencement of the Action

22. On August 22, 2016, Defendants filed their motion to dismiss the Amended Complaint. D.I. 29-30. On September 9, 2016, Hurwitz filed an opposition, and Defendants filed a reply on September 19, 2016. D.I. 31-32.

23. On February 1, 2017, Vanguard and several of its subsidiaries, including LRE, filed voluntary petitions for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") under the case captioned *In re Vanguard Natural Resources LLC*, Case No. 17-30560 (the "Bankruptcy Action"). On February 23, 2017, a notice of bankruptcy and suggestion of automatic stay was filed in this Court by Vanguard and LRE. D.I. 36.

24. On March 13, 2017, Judge Sue L. Robinson denied Defendants' motion to dismiss in its entirety. D.I. 37-38; *Hurwitz*, 241 F. Supp. 3d at 503.

25. On March 27, 2017, the LRE Defendants and the VNR Defendants each filed answers to the Amended Complaint.[5] D.I. 40-41.

26. On July 18, 2017, Vanguard's Modified Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Plan") was confirmed in the Bankruptcy Action.

27. On July 25, 2017, this matter was reassigned to this Court following Judge Robinson's retirement. On August 2, 2017, this Court issued a revised scheduling order setting a July 30, 2018 trial date. D.I. 66.

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[5] On April 12, 2017, Lighthouse Merger Sub was terminated from the case upon notice to the Court that, as of October 5, 2015, the entity was merged out of existence when it merged with and into LRE. D.I. 43.

28. On August 1, 2017, the Bankruptcy Plan became effective in the Bankruptcy Action.

29. Pursuant to this Court's August 2, 2017 scheduling order, on November 3, 2017, Hurwitz moved for class certification, which Defendants opposed. D.I. 78-79, 107.

30. On November 3, 2017, Defendants filed motions for summary judgment on Hurwitz's individual federal securities law claims. D.I. 81-82, 89-90. Hurwitz filed an opposition on December 1, 2017, and Defendants filed a reply on December 8, 2018. D.I. 108, 114.

31. On December 19, 2017, after full briefing, this Court held a hearing on the class certification motion and the summary judgment motions. On December 29, 2017, Defendants' motions for summary judgment were denied without prejudice. D.I. 119. On January 2, 2018, the Court granted Hurwitz's motion for class certification, appointed Hurwitz as Class Representative, Robbins Arroyo as Lead Class Counsel, and Cooch and Taylor as Liaison Class Counsel, and conditionally certified a class consisting of former LRE unitholders. D.I. 120.

32. On January 17, 2018, the Court entered an order approving class notice, notice procedures, and appointment of a notice administrator, and set May 29, 2018 as the deadline for Class Members to request exclusion from the Class. D.I. 126.

33. On March 7, 2018, Class Representative stipulated to the dismissal of LRE and Vanguard as, pursuant to the Bankruptcy Plan, any claims against the debtors Vanguard and LRE were expunged, disallowed, and discharged.[6] D.I. 137. Pursuant to the stipulation, on March 8,

[6] However, the stipulation expressly stated that "[t]he parties further stipulate and agree that dismissal of [Class Representative's] claims against the [entity defendants] as stipulated herein shall have no effect on … the claims pending against the remaining Defendants" in this Action. D.I. 137.

2018, this Court dismissed defendants LRE and Vanguard from this Action with prejudice. D.I. 138.

C. Discovery Conducted to Date

34. The parties have undertaken extensive fact and expert discovery relating to the Exchange Act and Securities Act claims at issue in this Action. Specifically, Lead Class Counsel has reviewed tens of thousands of pages of documents and other materials produced by Defendants in response to numerous discovery requests, including e-mail communications, board minutes and materials, financial data, analyst reports, and SEC filings. Lead Class Counsel has also reviewed documents and other materials produced in response to the subpoenas that Class Counsel issued to various third-parties, including, among others: (i) LRE's financial advisor, Tudor, Pickering, Holt & Company ("TPH"); (ii) LRE's conflicts committee's financial advisor, Simmons & Company; and (iii) Vanguard's lead lender and administrative agent, Citibank, N.A. ("Citibank").

35. Since January of 2018, Lead Class Counsel has deposed ten witnesses who played a role in the Acquisition and/or the administration of Vanguard's credit agreement: (i) Eric Mullins (LRE's former co-CEO and former Chairman of the LRE Board); (ii) Ryan Midgett (Vanguard's former Treasurer); (iii) Johnathan Farber (former LRE Board member); (iv) John A. Bailey (former LRE Board member and Chairman of LRE's Conflicts Committee); (v) Jaime Casas (LRE's former CFO); (vi) Mark Carnes (Vanguard's former Director of Acquisitions); (vii) Scott W. Smith (Vanguard's former CEO); (viii) Jeffrey Ard (a Citibank representative); (ix) Richard A. Robert (Vanguard's former CFO); and (x) Chad Michael (a TPH representative).

36. Class Representative has responded to discovery propounded by Defendants, including several requests for production, interrogatories, and requests for admission.

37. On November 17, 2017, Class Representative sat for a deposition where he was questioned by defense counsel over the course of several hours.

38. Further, Lead Class Counsel retained three persons as industry and financial experts to assist with the evaluation of documents and testimony, as well as the assessment of damages that Class Representative and the Class sustained as a result of Defendants' alleged violations of the Exchange Act and the Securities Act. Specifically, William Kennedy, Ph.D, CPA/ABV of Duff & Phelps, LLC, was retained to assess damages incurred by the Class as a result of Defendants' alleged violations of sections 14(a) and 20(a) of the Exchange Act; Matthew R. Morris, CFA/CLP of RGL Forensics, was retained to assess damages incurred by the Class as a result of the VNR Defendants' alleged violations of sections 11 and 15 of the Securities Act; and Lesa S. Adair, a thirty year veteran of the oil and gas sector and a co-founder of the energy consulting firm Pearson Adair & Co., was retained to address the importance of various financial metrics omitted from the Proxy issued in connection with the Acquisition. On April 9, 2018, the merits reports prepared by each of these experts were exchanged with Defendants. The same day, Class Representative received the affirmative report of the person whom Defendants designated as an expert, which addressed Defendants' negative loss causation arguments.

III. SETTLEMENT

A. Settlement Negotiations

39. After months of discovery, and, nearing the May 4, 2018 discovery cut-off set by the Court, on March 23, 2018, Class Representative sent a revised demand letter to Defendants to

explore whether a settlement was feasible.[7] In April 2018, the parties agreed to participate in mediation before Robert A. Meyer, Esq. On April 18, 2018, the Court entered a revised scheduling order that extended certain deadlines in order to accommodate the parties' efforts to mediate. D.I. 163.

40. The parties prepared detailed mediation statements and engaged in a full-day in-person mediation session with Mr. Meyer in New York City on May 17, 2018. These efforts culminated with the parties agreeing to settle the Action for $8,000,000, subject to the negotiation of the terms of a stipulation of settlement and approval by the Court. On May 22, 2018, the parties informed the Court that they reached an agreement-in-principle to settle the Action. D.I. 172.

41. On June 27, 2018, Class Representative filed his Unopposed Motion for Preliminary Approval of Settlement. D.I. 175-176. On July 25, 2018, the Unopposed Supplement to Class Representative's Amended Unopposed Motion for Preliminary Approval of Settlement was filed with the Court. D.I. 189. The Court granted the Preliminary Approval Order on July 27, 2018. D.I. 191-192. A final hearing for approval of the Settlement is currently scheduled for December 14, 2018. *Id.*

42. For the reasons more fully set forth herein, Lead Class Counsel believes this Settlement is an excellent result.

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[7] Consistent with paragraph 2 of this Court's August 2, 2017 scheduling order [D.I. 66], Class Representative sent an initial demand to Defendants on January 26, 2018. The LRE Defendants and the VNR Defendants each responded to Class Representative's initial demand on February 7, 2018.

B. Analysis of the Factors Affecting Settlement

43. Courts in the Third Circuit must consider the following factors in deciding whether to approve a settlement of a class action under Rule 23(e) of the Federal Rules of Civil Procedure: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of the discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975).

44. Based on an analysis of these factors, the terms of the Settlement and Plan of Allocation before the Court are fair, reasonable, and adequate, and should be approved.

1. The Complexity, Expense, and Likely Duration of the Action

45. The first factor, the complexity, expense, and likely duration of the litigation, supports the Settlement. Securities class actions are extremely complex, time-consuming, and expensive. As discussed herein, this case presented several complicated factual and legal issues. Further litigation would have resulted in substantial resources being expended in order to proceed through the completion of expert discovery, renewed summary judgment motions, trial, and the post-trial appellate process, without any guarantee of a better resolution for the Class. These expenditures would have also served to deplete any potential recovery at trial. The Settlement avoids these expenditures and provides an immediate recovery for the Class. Therefore, this factor favors the Settlement.

2. The Reaction of the Class to the Settlement

46. The reaction of the Class also favors the Settlement. As outlined below (*infra* Section III.C.), the Settlement Notice has been disseminated to 15,889 potential Class Members and nominees as of the date of this filing. *See* Affidavit of Brian Stone Regarding: (A) Mailing of the Settlement Notice and Proof of Claim; (B) Publication of Summary Notice; and (C) Update to Website [D.I. 194] ("Stone Aff."), ¶8.

47. To date, not a single Class Member has objected to the Settlement, the Plan of Allocation, the Service Award, and/or any of the fees and expenses requested by Class Counsel. Given the lack of any opposition, the reaction of Class Members weighs in favor of the Settlement.[8]

3. The Stage of the Proceedings and the Amount of the Discovery Completed

48. The third factor, the stage of the proceedings and the amount of the discovery completed, fully supports the Settlement. At the time the Settlement was reached, Lead Class Counsel, with the assistance of Liaison Class Counsel, had, *inter alia*: (i) conducted an extensive investigation into the Proxy issued in connection with the Acquisition; (ii) successfully opposed Defendants' comprehensive motion to dismiss [D.I. 37-38]; (iii) successfully opposed Defendants' motions for summary judgment on Class Representative's individual securities claims [D.I. 108]; (iv) successfully certified the Class over Defendants' opposition [D.I. 120]; (v) propounded written discovery and received and analyzed tens of thousands of pages of documents produced by Defendants and various third-parties; (vi) deposed ten witnesses,

[8] The objection deadline is November 9, 2018. Should any timely objections be filed, Class Representative's counsel will address them in their reply memorandum, to be filed no later than December 7, 2018.

including several current and former officers and/or directors of LRE and Vanguard; (vii) retained three industry and financial experts to evaluate evidence and assist with the computation of damages; and (viii) exchanged merits expert reports with Defendants. Accordingly, this factor strongly supports the Settlement.

4. The Risks of Establishing Liability and Damages

49. The fourth and fifth factors, the risks of establishing liability and damages, also favor the Settlement. While Class Representative remains confident in his ability to prove the federal securities law claims asserted in this Action (and to counter any asserted affirmative defenses), the risks of having the Action dismissed at summary judgment or losing at trial, when weighed against the immediate benefits of the Settlement, confirm that the Settlement is in the best interest of the Class. Although the Amended Complaint survived Defendants' motion to dismiss, Class Representative would still face numerous obstacles proving the existence of material omissions and/or materially misleading statements in the Proxy, as well as demonstrating loss causation and damages.

50. Defendants have denied, and continue to deny, any and all liability for the federal securities law claims asserted by Class Representative on behalf of himself and the Class. Specifically, Defendants have asserted that Class Representative and the Class cannot demonstrate the existence of material omissions and/or materially misleading statements because: (i) the Proxy did not omit any material information, as the allegedly omitted information identified in the Amended Complaint was disclosed and readily available; (ii) even if any information was undisclosed in the Proxy, such information was immaterial; and (iii) no actionable statements in the Proxy were rendered false and/or misleading by the allegedly omitted information. While Class Representative believes that evidence supports a contrary

view, there would be substantial uncertainty regarding whether Class Representative could establish Defendants' liability under the Exchange Act and/or Securities Act.

51. In addition, Defendants have taken the position that the claims held by Class Representative and a majority of the Class were extinguished upon the confirmation of Vanguard's Bankruptcy Plan. Specifically, Defendants maintain that, under the Bankruptcy Plan and the order of the Bankruptcy Court confirming the Bankruptcy Plan, each holder of Vanguard equity interests who did not "opt out" of the Bankruptcy Plan expressly released each of the Defendants from all claims and causes of action that arose prior to the effective date of the Bankruptcy Plan, which Defendants argue would include claims arising from the Acquisition. Defendants maintain that Class Representative and the overwhelming majority of the other Class Members did not "opt out" of the Bankruptcy Plan. Because the claims at issue in this Action all arose prior to the effective date of the Bankruptcy Plan, Defendants maintain that all such Class Members released all of their claims in this Action. While Class Representative vehemently disputes the validity of such releases, there exists substantial uncertainty as to whether such releases would ultimately be enforced by either the Bankruptcy Court or this Court in the absence of the Settlement.

52. Further, throughout this Action, Defendants have maintained that Class Representative and the Class suffered no damages as a result of the actions detailed in the Amended Complaint. In particular, Defendants have contested loss causation and damages by strongly arguing that any investment losses suffered by Class Representative and the Class were attributed to other factors, including the largest downturn in oil and gas prices in at least the last decade, and not to the allegedly omitted material information identified in the Amended Complaint. Defendants, along with their merits expert, also repeatedly asserted that Class

Representative and the Class could not demonstrate any correlation between their investment losses and the disclosures identified in the Amended Complaint, and in their mediation statements attacked the various damages analyses prepared by Class Representative's experts as unsound and unsupported by prior case law. Based on these arguments, there is no doubt that Defendants would continue to vigorously contest every element of the Securities Act and Exchange Act claims asserted in this Action, including loss causation and damages and, had the Action continued, these issues would have evolved into a proverbial "battle of the experts," making the outcome of the Action unpredictable and uncertain.

53. Although Class Representative was confident in the strength of the allegations in the Amended Complaint, the evidence adduced to date, and the damages analyses performed by his experts, there was substantial risk that the jury could have sided with Defendants on any of these issues if this Action had proceeded to trial (and additional risk that a favorable result at trial would be disturbed on appeal). For these reasons, achieving the substantial Settlement at this stage of the Action was a meaningful achievement that avoids the considerable expense, delay, and risk of further litigation.

5. The Risk of Maintaining the Class Action Through Trial

54. The sixth factor concerns the risks of maintaining the class action through trial. While the Court granted Class Representative's motion for class certification and certified the Class, there was no guarantee that class certification would be maintained throughout trial, since courts may exercise their discretion to re-evaluate the appropriateness of class certification any time before a decision on the merits. Moreover, on numerous occasions counsel for Defendants communicated that, absent Settlement, they intended to petition this Court or the Bankruptcy Court to enforce the various release provisions contained in Vanguard's Bankruptcy Plan. Given that Class Representative and an overwhelming majority of the Class purportedly failed to "opt

out" of the Bankruptcy Plan's releases, Defendants may have been able to successfully enforce those provisions and significantly alter the size and composition of the Class. This factor therefore weighs in favor the Settlement.

6. The Ability of Defendants to Withstand a Greater Judgment

55. The seventh factor evaluates the range of reasonableness of the settlement fund in light of the best possible recovery. Following the confirmation of Vanguard's Bankruptcy Plan, both Vanguard and LRE were dismissed from this Action with prejudice. D.I. 138. Thus, at the time of Settlement, there was no large corporate defendant able to withstand a more substantial judgment had Class Representative and the Class successfully proved their claims at trial.

56. Moreover, Defendants had limited Director and Officers' ("D&O") insurance coverage. Specifically, the LRE Defendants had a primary D&O liability insurance policy providing $10 million of coverage, while the VNR Defendants had a D&O liability insurance policy providing only $5 million of coverage. Based on representations from counsel for Defendants, a significant amount of the proceeds from these policies had been exhausted litigating this Action prior to the mediation. Finally, non-party Vanguard Natural Resources, Inc. is contributing the remaining $650,000 of the Settlement Amount, even though Vanguard declared Chapter 11 Bankruptcy during the pendency of this Action and was dismissed as a defendant with prejudice. Particularly given the sources of the settlement funds, there was strong reason for Class Representative to conclude that he had recovered a significant portion of the funds obtainable in this Action. In the absence of settlement, there was a real risk that continued litigation would deplete or exhaust Defendants' available insurance and reduce the recovery for the Class, regardless of the outcome on the merits.

7. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery

57. The eighth factor evaluates the range of reasonableness of the settlement fund in light of the best possible recovery.

58. The $8,000,000 obtained here represents an approximately 9.6% increase in the value of the consideration received by the Class in connection with the close of the Acquisition.[9]

59. In addition, a recent study by Cornerstone Research, titled *Securities Class Action Settlements—2017 Review and Analysis*, found that between 2008 and 2017 the median settlement for class actions asserting claims under certain provisions of the Securities Act was just $4.5 million.[10] Ex. 2.

60. Moreover, the experts retained by Class Representative estimated that the Class sustained maximum class-wide damages of approximately $70.6 million for the Securities Act violations and maximum class-wide damages of approximately $48.2 million for the Exchange Act violations. The Settlement of $8,000,000 therefore reflects roughly 11.3% to 16.5% of the total possible recovery of $70.6 million to $48.2 million estimated by the experts retained on behalf of Class Representative and the Class. This Settlement therefore represents a significantly higher recovery than the average percentage of recovery in cases asserting the same or similar causes of action under federal securities laws. Indeed, a recent study by National Economic Research Associates, Inc. ("NERA"), titled *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review*, found that the median ratio of investor losses to settlement value was

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[9] On October 5, 2015, in connection with the close of the Acquisition, approximately 10,468,300 Vanguard common units were distributed to the Class. Based on Vanguard's closing price that day of $7.98 per unit, the Vanguard units that the Class received were valued at approximately $83.5 million.

[10] The analysis did not consider claims brought under section 14(a) of the Exchange Act.

just 2.6% for securities class actions involving alleged violations of Rule 10b-5, section 11 of the Securities Act, and/or section 12 of the Securities Act. *See* Ex. 3, Fig. 29. This further substantiates the excellent recovery for the Class here. As such, this factor further supports the Settlement.

8. The Range of Reasonableness of the Settlement Fund to a Possible Recovery in Light of All the Attendant Risks of Litigation

61. The ninth factor, the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation, favors approval of the Settlement when balanced against all risks of continued litigation. Class Representative faced numerous obstacles in proving both liability and damages and there was no certainty, given Defendants' asserted defenses, that Class Representative and the Class would prevail in demonstrating either. Additionally, Defendants would inevitably appeal any substantial verdict and damages award. The entire litigation process could span several more years, delaying any recovery by Class Members and increasing the risk that an intervening change in the law or other unforeseeable changed circumstances could reduce or eliminate a recovery. An appeal of a verdict would also carry the risk of reversal, resulting in either no recovery or, at a minimum, significantly delaying any recovery for the Class. Because of these risks and delays associated with continued litigation and eventually proceeding to trial, there was a risk that any litigated recovery would be less than the recovery achieved in this Settlement. Therefore, Lead Class Counsel respectfully submits that the Settlement obtained is eminently fair, reasonable, adequate, and in the best interest of the Class.

62. In sum, Lead Class Counsel strongly endorses the Settlement. In light of the potential risks of establishing liability and damages, Lead Class Counsel and Class Representative respectfully submit that the Settlement represents an extremely favorable result

for the Class under the circumstances. It provides Class Members with a substantial cash benefit now, rather than a potential recovery after several more years of continued litigation—or the possibility of no recovery at all.

C. Mailing and Publication of Notice of Class Action and Potential Settlement

1. Notice of Pendency of Class Action

63. On January 17, 2018, the Court entered an order approving class notice, notice procedures, and appointment of a notice administrator, and set May 29, 2018 as the deadline for Class Members to request exclusion from the Class. D.I. 126.

64. Consistent with the Court's January 17, 2018 Order, the Notice of Pendency of Class Action ("Class Notice") was mailed to approximately 14,134 potential class members on or before March 30, 2018. *See* Affidavit of Jose C. Fraga Regarding the Dissemination of Notice of Pendency of Class Action ("Fraga Aff.") [D.I. 147]. The Class Notice informed potential class members that:

> If you do not wish to remain a member of the Class described above, you must mail a written request for exclusion from the class action to the address set forth below, postmarked no later than May 29, 2018.
>
> ……
>
> If you are a member of the Class and do not wish to be bound by future orders of the Court or participate in any future potential settlement or judgment regarding the Class, you must request to be excluded from the Class. If you wish to be excluded, you must submit a written request for exclusion from the Class, addressed to LRR Energy Securities Litigation, c/o GCG, P.O. Box 10532, Dublin, Ohio 43017-4532. You may also download a copy of the Notice at www.LRREnergySecuritiesLitigation.com.
>
> …..
>
> THE REQUEST FOR EXCLUSION MUST BE POSTMARKED ON OR BEFORE MAY 29, 2018 and must clearly identify the name and address of the person seeking exclusion, and clearly state that the person requests to be excluded from the Class.

Id., Ex. A.

65. In addition, the Summary Notice was published in *Investor's Business Daily* on March 26, 2018, and transmitted over the *PR Newswire* on March 30, 2018. *Id.*, ¶6 & Exs. C-D.

66. As of May 29, 2018, only 22 persons requested exclusion from the Class. The name of each Class Member who requested exclusion was previously submitted to the Court. Stipulation, Ex. A-4. To date, no late requests for exclusion have been received from any members of the Class.

2. Notice of Proposed Settlement

67. The Court's July 27, 2018 Preliminary Approval Order directed Garden City Group[11] (the "Claims Administrator") to cause the mailing of the Notice of Proposed Settlement of Class Action and Settlement Hearing ("Settlement Notice") and the Proof of Claim and Release form ("Proof of Claim") by First-Class Mail to all Class Members identifiable with reasonable efforts, no later than August 9, 2018. D.I. 191.

68. Pursuant to the Court's Preliminary Approval Order, as of the date of this filing, the Settlement Notice and Proof of Claim were mailed to 15,889 potential Class Members and nominees beginning on June 28, 2016. *See* Stone Aff., ¶¶4-8. The Settlement Notice apprised Class Members and nominees of, among other things: (i) the terms of the Settlement; (ii) the Plan of Allocation (described *infra* Section IV.); (iii) Class Counsel's application for attorneys' fees and expenses; (iv) the proposed Service Award for Class Representative; (v) the procedures and deadline for objecting to any aspect of the Settlement, the Service Award, and/or fees and

[11] Garden City Group was acquired by Epiq Class Action & Claims Solutions, Inc. on June 15, 2018 and is now continuing operations as part of Epiq.

expenses requested by Class Counsel; and (vi) their ability to attend and/or participate at the final approval hearing currently scheduled for December 14, 2018 before the Court. *See* Ex. 4.

69. Pursuant to the Preliminary Approval Order, the Settlement Notice, Proof of Claim form, Stipulation, as well as other relevant documents, were posted by the Claims Administer to the website created for this Action. Stone Aff., ¶10. In addition, the aforementioned materials were also posted on August 9, 2018 to a page dedicated to this Action on Robbins Arroyo's website.[12] Pursuant to the Preliminary Approval Order, all future filings in the Action will be posted on these websites. These documents will remain on my firm's and the Claims Administrator's websites until the Court grants final approval of the Settlement and the deadline to appeal any final judgment has expired.

70. Pursuant to the Preliminary Approval Order, the Claims Administrator also published the Summary Settlement Notice in the national edition of *Investor's Business Daily* on August 13, 2018. *See* Stone Aff., ¶9. The same day, the Claims Administrator also transmitted the Summary Settlement Notice over *PR Newswire*. *Id*., ¶9.

71. As of the date of the filing of this declaration, which is still three weeks from the claim submission deadline, 1,342 Proof of Claim forms have been submitted to the Claims Administrator. The total is expected to climb significantly as the deadline approaches, and Class Counsel will provide the Court with more up-to-date information prior to the hearing currently set for December 14, 2018.

72. Consistent with the Court's Preliminary Approval Order, the time to file objections will expire on November 9, 2018. At the time of the filing of this declaration, I have

[12] *See* http://www.lrrenergysecuritieslitigation.com/; https://www.robbinsarroyo.com/lrr-energy-securities-litigation-settlement/.

been informed that no objections have been raised to any aspect of the Settlement, the Plan of Allocation, the Service Award, or Class Counsel's request for attorneys' fees and expenses.

IV. THE PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS

73. Upon approval by the Court, the Plan of Allocation governs the method by which the Settlement Fund will be distributed to Class Members. As fully described in the Settlement Notice and the Stipulation, the Plan of Allocation provides for the equitable allocation of the Settlement Fund via two forms of consideration.

74. *First*, under the Plan of Allocation, after this Court's Final Approval Order becomes Final, except for Administration Costs and Tax Expenses that may then be due, the first payments made from the Settlement Fund shall be an initial settlement payment of $5.00 (five dollars, payable via check—each an "Initial Settlement Payment" and together the "Initial Settlement Payments") to each Person who: (i) is a Class Member; (ii) received notice of class pendency pursuant to the Court's January 17, 2018 Order [D.I. 126], received the Settlement Notice or otherwise provides a valid Proof of Claim identifying him, her, or itself as a valid Class Member; and (ii) did not validly request exclusion from the Class. The submission of a Proof of Claim is ***not*** required to receive an Initial Settlement Payment. *See* Ex. 4; Addendum, ¶¶1-8.

75. *Second*, following the distribution of the Initial Settlement Payments, the Settlement Fund, less all taxes, approved costs, expenses, and the Initial Settlement Payments (the "Net Settlement Amount") will be distributed to Class Members who submit timely and valid Proof of Claim forms to the Claims Administrator ("Settlement Amount Recipients"). The Net Settlement Amount will be allocated *pro rata* amongst the Settlement Amount Recipients based on the number of LRE common units held as of August 28, 2015 that were exchanged for

Vanguard common units on or about October 5, 2015 in connection with the close of the Acquisition. *See* Ex. 4; Addendum, ¶¶1-8.

76. Distributions will be made to Settlement Amount Recipients as soon as practicable after all claims have been processed and after the Court's Final Approval Order becomes Final. If any funds remain in the Net Settlement Amount after the initial distribution by reason of uncashed distribution checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the initial distribution of the Net Settlement Amount cash their distributions, any balance remaining in the Net Settlement Amount after at least one hundred and twenty (120) days after the initial distribution of such funds shall be used: (a) first, to pay any amounts mistakenly omitted from the initial disbursement; (b) second, to pay additional settlement administration fees, costs, and expenses, including those of Lead Class Counsel as may be approved by the Court; and (c) third, to make a second distribution to claimants who cashed their checks from the initial distribution and who would receive at least $10.00, after payment of the estimated costs, expenses, or fees to be incurred in administering the Net Settlement Amount and in making this second distribution, if such second distribution is economically feasible. These redistributions shall be repeated, if economically feasible, until the balance remaining in the Net Settlement Amount is *de minimis* and such remaining balance shall then be distributed to the United Way of Greater Houston's Disaster Recovery Fund, which was selected by the parties because both LRE and Vanguard were headquartered in Houston, Texas, and many Class Members are believed also to reside there. *See* Ex. 4; Addendum, ¶¶1-8.

77. Under the Plan of Allocation, the Paying Agent shall not distribute to Class Counsel any fees or expenses awarded by the Court until after the Initial Settlement Payments are distributed.

V. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES AND EXPENSES

78. Lead Class Counsel respectfully requests that the Court award Class Counsel 30% of the $8,000,000 (or $2,400,000) Settlement for attorneys' fees.[13] Class Counsel further requests payment of $457,541.63 in reimbursement of expenses and charges incurred by Class Counsel. In addition, the Class Representative seeks payment for his time and expenses incurred in representing the Class of $25,000 (the "Service Award").

A. The Requested Attorneys' Fees Are Fair and Reasonable

79. Class Counsel believes a $2,400,000 fee in this Action is reasonable and appropriate in light of the considerable time and resources Class Counsel expended in prosecuting the Action, and the inherent risk of nonpayment from representing the Class in this Action on a contingent basis.

80. The fee percentage sought in this Action is consistent with awards in the Third Circuit in cases involving common funds and well within the range of, and consistent with, the percentages of the common fund fees awarded to counsel in other securities class actions. Based on the quality of Class Counsel's work and the benefit obtained for Class Members in light of the risks discussed above, the requested fee is reasonable.

81. The Third Circuit has held that, in exercising its discretion in awarding fees, district courts should consider "among other things," the following criteria, including: (a) the size

[13] The amount awarded to Class Counsel will compensate Lead Class Counsel Robbins Arroyo and Liaison Class Counsel Cooch and Taylor.

of the fund created and the number of persons benefited; (b) the presence or absence of substantial objections by members of the class to the settlement terms and/or the fees requested by counsel; (c) the skill and efficiency of the attorneys involved; (d) the complexity and duration of the litigation; (e) the risk of nonpayment; (f) the amount of time devoted to the case by plaintiffs' counsel; and (g) the awards in similar cases.

1. The Size of the Fund Created and the Number of Persons Benefited

82. The first factor, the size of the fund created and the number of persons benefited, supports the fee request. Lead Class Counsel, with the assistance of Liaison Class Counsel, have secured a settlement that provides for a substantial and certain cash payment of $8,000,000 for the benefit of the entire Class and represents a significantly larger recovery of damages than the average securities class action recovery in similarly sized cases asserting similar causes of action. *Supra* Section III.B.7.

2. The Presence or Absence of Substantial Objections by Members of the Class to the Settlement Terms and/or the Fees Requested by Counsel

83. The second factor is the presence or absence of substantial objections by members of the class to the settlement terms and/or the fees requested by counsel. To date, no Class Members have filed objections to the Settlement, the Service Award, or the fees and expenses requested by Class Counsel, which supports the reasonableness of the fee request.

3. The Skill and Efficiency of the Attorneys Involved

84. The third factor, the skill and efficiency of the attorneys involved, also supports the fee request. Class Counsel has significant experience in representing investors in securities litigation and the undersigned is an experienced securities class action litigation attorney. *See* Ex. 1 (Robbins Arroyo Firm Resume); Declaration of Blake A. Bennett in Support of Class

Counsel's Motion for an Award of Attorneys' Fees and Expenses and Class Representative's Service Award ("Bennett Decl."), Ex. 1 (Cooch and Taylor Firm Resume), filed herewith.

85. The representation of the Class in this Action required considerable analysis and briefing by the undersigned and my colleagues. Class Counsel's substantial experience and advocacy were required throughout this Action, including during Defendants' efforts to dismiss the action, to oppose class certification, and to obtain summary judgment on Class Representative's individual federal securities law claims, as well as during Settlement negotiations where a considerable effort was made to achieve the best possible settlement and convince Defendants, their insurers, and defense counsel, of the risks they faced should they not settle.

86. Class Counsel worked diligently to obtain an excellent result for the Class. From the outset, Class Counsel employed considerable resources and spent considerable time researching and investigating facts to support a pleading that could survive a motion to dismiss and position the Action for class certification. The theories of damages were complex and Lead Class Counsel devoted extensive time and analysis working to formulate class-wide methods of calculating damages and retained leading financial and industry experts to assist in these efforts.

87. The recovery obtained for the Class is the direct result of the significant efforts of highly skilled and specialized attorneys who possess substantial experience in the prosecution of complex securities class actions. Class Counsel are among the most experienced securities class action attorneys in the country. The Settlement represents a substantial recovery for the Class, one that is attributable to the diligence, determination, hard work, and reputation of Class Counsel.

88. The quality of opposing counsel is also important in evaluating the quality of Class Counsel's work. In this Action, Defendants were represented by experienced, highly skilled, and eminently qualified lawyers from well-respected defense firms including Vinson & Elkins LLP, Hunton Andrews Kurth LLP, McKool Smith, P.C., and Blank Rome LLP. Defense counsel in this Action have a reputation for vigorous advocacy in the defense of complex securities cases, especially where, as here, the cases involve companies in the oil and gas sector. The ability of Class Counsel to obtain a favorable Settlement in the face of such qualified opposition only underscores the quality of Class Counsel's representation of the interests of the Class.

4. The Complexity and Duration of the Litigation

89. The fourth factor, the complexity and duration of the litigation, also supports the fee request. As detailed above (*supra* Section III.B.4), this Action involved complex issues of law and fact that presented considerable risk to Class Representative's case. This case involved litigating complex violations of sections 14(a) and 20(a) of the Exchange Act and violations of sections 11 and 15 of the Securities Act. Thus, when Class Counsel undertook this representation on a contingent basis, there was no assurance that the Action would survive a motion to dismiss, motion for class certification, motion for summary judgment, trial, and/or any appeals and therefore no assurance Class Counsel would recover any payment for their services.

90. From the outset, Class Counsel understood that they were embarking on a complex, expensive, risky, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking this responsibility, Class Counsel were obligated to (and did) ensure that sufficient resources were dedicated to the prosecution of this Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average lag time of

several years for securities class action cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Class Counsel have incurred hundreds of thousands of dollars in out-of-pocket expenses in prosecuting the Action for the benefit of the Class. *See infra* Section V.B.

91. Securities class action cases present formidable challenges as there are numerous decisions ruling in favor of defendants at each stage of litigation. Defendants' motion to dismiss and motion for summary judgment of Class Representative's individual federal securities law claims raised complex and challenging arguments that required nuanced legal arguments in response, and Class Counsel expended considerable effort in opposing Defendants' motions. In addition, Class Counsel moved for and was successful in obtaining certification of the Class, despite Defendants' efforts to defeat certification. If the case had not settled, Class Counsel were fully prepared to pursue this Action through the completion of expert discovery, summary judgment, trial, and appeal. Each of those stages of litigation poses considerable challenges and expense in securities class actions. Proving the existence and materiality of misstatements and omissions alleged in the Amended Complaint, as well as analyzing and proving loss causation and damages require substantial expertise and effort.

92. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. If this important public policy is to be carried out, courts should award fees that adequately compensate plaintiff's counsel, taking into account the risks undertaken in prosecuting a securities class action.

93. Here, Class Counsel's persistent efforts in the face of substantial risks and uncertainties have resulted in an excellent immediate recovery for the benefit of the Class. In

circumstances such as these, and the very favorable result achieved, the requested fee of $2,400,000 is reasonable and should be approved.

5. The Risk of Nonpayment

94. The risk of nonpayment, the fifth factor in the fee analysis, was a significant risk in this Action. When Class Counsel undertook to represent Class Representative and the Class, it was with the expectation that they would have to devote a significant amount of time and effort in their prosecution and advance large sums in expenses on experts, case related travel, mediation, and discovery. This expectation proved a reality as Class Counsel did devote a significant amount of time and effort in their prosecution and advanced large sums in expenses on experts, case related travel, mediation, and discovery. *See infra* Sections V.A.6.-V.B.

95. Class Counsel undertook this case solely on a contingent fee basis, assuming a substantial risk that the case would yield no recovery and leave us uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and reimbursed for their expenses on a regular basis, Class Counsel have not been compensated for any time or expenses since this Action was commenced in August of 2015. When Class Counsel undertook to represent Class Representative and the Class in this matter, it was with the knowledge that it would require many hours of hard work against some of the best defense lawyers in the United States with no assurance of ever obtaining any compensation for our efforts. The only way Class Counsel would be compensated was to achieve a successful result.

96. The risk of nonpayment was particularly significant here because, *inter alia*, Vanguard declared bankruptcy during the pendency of this Action and Vanguard and LRE were dismissed from this Action with prejudice following the confirmation of Vanguard's Bankruptcy Plan.

6. The Amount of Time Devoted to the Case by Counsel

97. The sixth factor concerns the amount of time devoted to the case by counsel. Class Counsel have worked extremely hard and devoted a significant amount of time and resources in the research, investigation, and prosecution of this Action.

98. Class Counsel have collectively expended more than 5,198.60 hours in the investigation, prosecution, and resolution of the Action against Defendants, for a collective lodestar value of $2,457,400.00. This total is inclusive of all time expended by Class Counsel up to and including July 25, 2018, when Class Counsel filed its Unopposed Supplement to Class Representative's Amended Unopposed Motion for Preliminary Approval of Settlement. D.I. 189. A breakdown of Class Counsel's lodestar and hours by firm is as follows:

FIRM	***HOURS***	***LODESTAR***
Robbins Arroyo LLP	5,060.00	$2,375,740.00
Cooch and Taylor, P.A.	138.60	$81,660.00
TOTAL	**5,198.60**	**$2,457,400.00**

99. The total number of hours spent on the litigation of this Action by Lead Class Counsel at Robbins Arroyo up to and including July 25, 2018 is 5,060.00. The total lodestar amount for attorney/paraprofessional time based on my firm's current rates is $2,375,470.00.

100. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. The hourly rates for attorneys and professional support staff included in the schedule are the same as the regular current rates counsel would charge for their services in non-contingent matters or that have been submitted to or approved by other courts.

101. A breakdown of the loadstar for my firm is as follows[14]:

Robbins Arroyo Time Report – Inception through 7/25/18

NAME		HOURS	RATE	LODESTAR
Stephen J. Oddo	(P)	723.25	$825.00	$596,681.25
Jenny L. Dixon	(P)	199.75	$825.00	$164,793.75
Nichole T. Browning	(OC)	115.50	$700.00	$80,850.00
Eric M. Carrino	(A)	2,026.75	$375.00	$760,031.25
David W. Uris	(A)	918.25	$575.00	$527,993.75
Scott F. Templeton	(A)	55.50	$575.00	$31,912.50
Matthew G. Leagre	(LC)	22.50	$175.00	$3,937.50
Paralegals	**	641.00	$234.75	$150,473.75
Corporate Research	**	218.25	$170.17	$37,140.00
Litigation Support	**	139.25	$157.46	$21,926.25
GRAND TOTAL		**5,060.00**		**$2,375,740.00**

(P) Partner (A) Associate (OC) Of Counsel (LC) Law Clerk
(**) Averaged Rate

102. The total number of hours spent on the litigation of this Action by Liaison Class Counsel at Cooch and Taylor. is 138.6. The lodestar amount for attorney time based on Cooch and Taylor's current rates is $81,660. *See* Bennett Decl., ¶¶4-5.

7. Awards in Similar Cases

103. With respect to the final factor, the consideration of the awards in similar cases, the accompanying Fee Motion demonstrates that the requested fee of 30% is supported by fee awards from district courts within the Third Circuit and courts nationwide.

104. The requested fee is also consistent with the median fee award for securities cases based on a recent analysis of fee award. A recent study by NERA, titled Recent *Trends in Securities Class Action Litigation: 2017 Full-Year Review*, found that between 2012 through

[14] This schedule was prepared from contemporaneous, daily time records prepared and maintained by my firm.

2017, the median fee award was 30% of the settlement amount for settlements between $5 million and $10 million. Ex. 3, Fig. 33.

105. The requested fees have been approved by the Court-appointed Class Representative. *See* Declaration of Class Representative Robert Hurwitz in Support of Motion for (1) Final Approval of Class Action Settlement and Plan of Allocation; and (2) an Award of Attorneys' Fees and Expenses and Class Representative's Service Award ("Hurwitz Decl."), ¶9, filed herewith. Class Representative has evaluated the request for fees and has come to the conclusion that the requested fees are warranted based on his substantial involvement in the prosecution of the Action. *Id.*, ¶¶4-7, 10. Class Representative also considered Class Counsel's substantial efforts in obtaining the recovery particularly in light of the substantial risks of litigation. *Id.*, ¶8. In addition, the requested fee of 30% is consistent with the retention agreement entered into by Class Representative, which permits Lead Class Counsel to recover a fee of 25% to 33% of the amount recovered, as well as reasonable expenses.

B. Class Counsel's Expenses Are Reasonable and Necessary

106. Class Counsel also requests a combined $457,541.63 in reimbursement for the costs and expenses reasonably and necessarily incurred in connection with the prosecution of this Action. A breakdown of Class Counsel's expenses by firm is as follows:

FIRM	***EXPENSES***
Robbins Arroyo LLP	$456,324.79
Cooch and Taylor, P.A.	$1,216.84
TOTAL	**$457,541.63**

107. The expenses for which Class Counsel seek reimbursement are the type of expenses necessarily and routinely charged to hourly paying clients and are reasonable in amount. They include the significant expenses incurred in connection with the retention of the three leading industry and financial experts that prepared detailed merits expert reports in

support of the claims asserted and damages sought by Class Representative and the Class. They also include others costs incurred in connection with the prosecution and the settlement of this Action, such as transportation, meals, and lodging, long distance telephone and facsimile charges, postage and delivery expenses, filing fees, photocopying, as well as the costs of document hosting, deposition reporting and transcripts, and mediation fees. All of these expenses were reasonable and necessary to the prosecution of the Action and Class Counsel respectfully request that they be approved for reimbursement from the Settlement Fund.

108. From the inception of Lead Class Counsel's involvement, Robbins Arroyo has incurred a total of $456,324.79 in unreimbursed expenses in connection with the prosecution of this Action, as follows:

Robbins Arroyo Expenses/Charges – Inception through 7/25/18

CATEGORY	***TOTAL***
Travel & Meals	$57,686.09
Photocopies	$20,553.15
Communications & Messaging	$3,312.95
Research & Investigation	$12,825.82
Discovery Costs	$48,034.39
Filing/Service Fees	$2,574.47
Mediation Fees	$9,862.92
Expert Consulting Fees	$301,475.00
TOTAL	**$456,324.79**

109. From the inception of Liaison Class Counsel's involvement, Cooch and Taylor has incurred a total of $1,216.84 in unreimbursed expenses in connection with the prosecution of this Action. *See* Bennett Decl., ¶¶5-6.

110. The expenses incurred in this Action are reflected on the books and records of Class Counsel. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of each firm's expenses. *See id.*

111. From the outset, Class Counsel were aware that they may not recover any of their expenses, and, at the very least, would not recover anything unless the Action was successfully resolved. Class Counsel also understood that, even assuming that the Action was successfully resolved, an award of expenses would not compensate them for the lost use of the funds advanced to prosecute this Action. Thus, Class Counsel were motivated to, and did, take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of this Action.

112. In connection with Preliminary Approval, Lead Class Counsel indicated that they would seek up to $325,000 in expense reimbursement. That figure was based on the invoices Lead Class Counsel had received prior to July 25, 2018, the date the Unopposed Supplement to Class Representative's Amended Unopposed Motion for Preliminary Approval of Settlement [D.I. 189] was filed. Since that time, however, Lead Class Counsel has received additional invoices for services rendered and expenses incurred prior to and in connection with the Settlement of this Action, totaling $132,541.63. Lead Class Counsel believes they are entitled to reimbursement for these additional expenses, including an invoice for $122,800 in expert fees,[15] because they relate to services rendered prior to or in connection with the Settlement, were necessary for the prosecution of this Action, and benefited Class Representative and the Class.

[15] On August 21, 2018, more than four weeks after the preliminary approval hearing, and more than seven weeks after Class Representative initially sought preliminary approval of the Settlement, Robbins Arroyo attorneys received a bill for $122,800 from one of the experts retained on behalf of Class Representative and the Class for services rendered prior to the Settlement.

VI. CLASS REPRESENTATIVE'S APPLICATION FOR THE SERVICE AWARD IS REASONABLE AND SHOULD BE APPROVED

113. In addition, Class Representative requests a Service Award of $25,000 to compensate him for the time he devoted to representing the Class and assisting in the prosecution of the case. *See* Hurwitz Decl., ¶10.

114. Courts in the Third Circuit have the discretion to award reasonable compensation in addition to claimed losses under the Private Securities Litigation Reform Act of 1995 ("PSLRA").[16] Such an award is intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes to recognize their willingness to act as a private attorney general.

115. The Court-approved Settlement Notice sent to Class Members informed them of Class Representative's intent to apply for a $25,000 Service Award for his time, expenses, and efforts relating to his representation of the Class. To date, there have been no objections to the Service Award requested by Class Representative.

116. Here, Class Representative protected the interests of the Class by vigorously prosecuting this Action. As set forth in his Declaration, Class Representative stepped forward to file this case and represent the Class by, among other things, communicating and consulting with counsel to investigate his claims, filing complaints, opposing Defendants' motion to dismiss, producing and reviewing relevant documents, submitting to a deposition, and taking the steps necessary to achieve the Settlement. In doing so, he devoted significant time to his oversight of, and participation in, the Settlement. *See* Hurwitz Decl., ¶¶7, 10.

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[16] Under the PSLRA, the Court may award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." *See* 15 U.S.C. §78u-4(a)(4).

117. In addition, the Service Award is particularly appropriate here in light of Class Representative's willingness to vigorously prosecute this Action even after his motives and mental capacity were publicly challenged by Defendants in connection with their efforts to oppose class certification. Ex. 5 (*Energy Co. Derides Potential Investor Class Rep as Ignorant*, Law360 (Dec. 8, 2017)).

VII. CONCLUSION

118. In light of the significant recovery to the Class and the substantial risks of this Action as described above and in the accompanying Settlement Motion and Fee Motion, Class Counsel respectfully submits that: (i) the Settlement is fair, reasonable, and adequate and should be approved; (ii) the Plan of Allocation represents a fair method for the distribution of the Net Settlement Fund among Class Members and should also be approved; and (iii) the motion for attorneys' fees and expenses, including Class Representative's Service Award, should be granted.

119. Attached hereto are true and correct copies of the following Exhibits:

Exhibit 1: Robbins Arroyo LLP Firm Resume;

Exhibit 2: Cornerstone Research, *Securities Class Action Settlements—2017 Review and Analysis*;

Exhibit 3: National Economic Research Associates, Inc., *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review*;

Exhibit 4: Notice of Proposed Settlement of Class Action and Settlement Hearing;

Exhibit 5: *Energy Co. Derides Potential Investor Class Rep as Ignorant*, Law360 (Dec. 8, 2017);

Exhibit 6: *W. Pa. Elec. Emps.' Pension Fund v. Alter*, No. 2:09-cv-04730-CMR, slip op. (E.D. Pa. Aug. 4, 2014); and

Exhibit 7: *In re Advanta Corp. ERISA Litig.*, No. 2:09-cv-04974-CMR, slip op. (E.D. Pa. Jan. 9, 2014).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of November, 2018, at San Diego, California.

STEPHEN J. ODDO

1306755

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, I electronically filed the *Declaration of Stephen J. Oddo in Support of Class Representative's Motion for (1) Final Approval of Class Action Settlement and Plan of Allocation; and (2) an Award of Attorneys' Fees and Expenses and Class Representative's Service Award* with the Clerk of Court using CM/ECF which will send notification of such filing to those registered as CM/ECF participants.

/s/ Blake A. Bennett
Blake A. Bennett (#5133)

Attorneys for Class Representative

Exhibit 1

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San Diego, CA 92101
619.525.3990 *phone*
619.525.3991 *fax*
www.robbinsarroyo.com

FIRM RESUME

Robbins Arroyo LLP[1] is a nationally recognized shareholder rights law firm dedicated to the prosecution of shareholder derivative and class action lawsuits. We are committed to the principle that the directors and managers of publicly traded corporations must be held accountable to the owners of the enterprise – the shareholders. A leader in corporate governance reform, Robbins Arroyo LLP has worked with individual and institutional shareholders to improve board oversight, legal compliance, transparency, and responsiveness at more than 120 Fortune 1000 companies. The firm has also helped secure several of the largest monetary recoveries in the history of shareholder derivative litigation, and has helped clients to realize more than $1 billion of value for themselves and the companies in which they have invested. For its achievements, the firm has received numerous accolades, including recognition from *U.S. News & World Report*, which named the firm a Best Law Firm for 2018 and 2017, *Daily Journal*, which named the firm a 2015 Top 25 Boutique in California, the Legal 500, which named the firm a Leading Firm in Merger and Acquisition Litigation in 2013-2018, the *National Law Journal*, which included the firm on its 2012 Litigation Boutiques Hot List, and ISS's Securities Class Action Services, which has listed the firm among the nation's top shareholder plaintiffs' firms. Ten of Robbins Arroyo LLP's attorneys were honored as Super Lawyers or Rising Stars in 2018. In addition, Robbins Arroyo LLP's co-founder, Brian J. Robbins, is featured in Best Lawyers in America for Securities Litigation (2016-2018), in *San Diego Business Journal* as Best of the Bar (2014-2016), and in *The Daily Transcript* as a Top Attorney (2015).

PRACTICE AREAS

In addition to representing individual and institutional investors in shareholder derivative actions, securities fraud class actions, and securities class actions arising out of mergers and acquisitions, initial public offerings, and going private transactions, Robbins Arroyo LLP's practice includes antitrust actions, Employee Retirement Income Security Act (ERISA) actions, whistleblower actions under the Dodd-Frank Wall Street Reform and Consumer Protection Act and the False Claims Act, and consumer class actions.

LEADERSHIP

Robbins Arroyo LLP's experienced attorneys provide skilled representation to clients through all phases of complex litigation. The firm's partners include former federal prosecutors, defense counsel from top corporate law firms, in-house counsel from leading financial institutions, and career shareholder rights litigators. Collectively, they have litigated hundreds of cases in nearly every state, serving in numerous court-appointed leadership roles in complex multi-jurisdictional litigation. They currently serve as lead or co-lead counsel in dozens of cases nationwide. The firm's attorneys are supported by investigators, corporate research analysts, client relations specialists, and legal support professionals, each of whom is dedicated to providing exceptional client service. Our talented team has helped secure significant results for our clients. We feature below some of the firm's achievements across the nation.

- ***Pirelli Armstrong Tire Corp. Ret. Med. Benefits Trust v. Hanover Compressor Co.***, No. H-02-0410 (S.D. Tex. Feb. 6, 2004): Shareholders of Hanover Compressor Company, now known as Exterran Holdings Inc., a provider of natural gas compression services operating in the United States and select international markets, brought claims on behalf of the company against company officers and directors for breach of fiduciary duty, waste of corporate assets, abuse of control, and gross mismanagement. The claims arose out of an off-balance-sheet joint venture to build and operate a natural gas processing plant on barges off the coast of Nigeria. Robbins Arroyo LLP attorneys, serving as lead negotiators for derivative plaintiffs, secured extraordinary results for Hanover. First, Robbins Arroyo LLP achieved for the company approximately $57.4 million in compensation – consisting of a $26.5 million payment and the return of 2.5 million shares valued at approximately $30.9 million by an entity controlled by certain of the individual defendants. Second, Robbins Arroyo

[1] "Robbins Arroyo LLP" and "the firm" herein collectively refer to the firm's previous names of Robbins Umeda LLP and Robbins Umeda & Fink, LLP.

LLP helped secure corporate governance changes at the company that have been noted as "groundbreaking" and "unprecedented" benefits for Hanover, including the appointment of two shareholder-nominated directors and becoming one of the first companies in the United States to commit to implementing a five-year rotation rule for its outside audit firms.

- ***In re Nicor, Inc. S'holder Derivative Litig.***, No. 02 CH 15499 (Ill. Cir. Ct.-Cook Cnty. Mar. 29, 2005): The firm served as co-lead counsel for plaintiffs who brought claims for breach of fiduciary duty and unjust enrichment against several officers and directors of Nicor, Inc., one of the largest natural gas distributors in the United States. Plaintiffs alleged that Nicor's management made material misrepresentations to and omitted material information from the Illinois Commerce Commission and the company's shareholders and customers, and unlawfully manipulated the company's operating results. Robbins Arroyo LLP attorneys negotiated and secured personnel changes among Nicor's executive officers and board members, as well as $33 million for Nicor.

- ***In re OM Group, Inc. Derivative Litig.***, No. 1:03-CV-0020 (N.D. Ohio Nov. 10, 2005): The firm served as lead counsel to plaintiffs in this derivative action arising out of a massive accounting fraud at this global solutions provider and specialty chemical manufacturer. During the litigation, our attorneys opposed and defeated defendants' motions to dismiss, reviewed thousands of documents produced during discovery, conducted expert discovery, and took over forty depositions of witnesses and defendants throughout the United States and Europe. Robbins Arroyo LLP obtained a settlement that included a $29 million payment to the company, the termination of the company's chief executive officer, the addition of two shareholder-nominated directors, and the implementation of various other beneficial corporate governance procedures at the company.

- ***Lieb v. Unocal Corp.***, No. BC331316 (Cal. Super. Ct.-L.A. Cnty. Dec. 20, 2005): Robbins Arroyo LLP served as co-lead counsel for the public shareholders of Unocal Corporation in this securities class action against Unocal and several of its insiders, officers, and directors for self-dealing and breach of fiduciary duty in connection with the proposed sale of Unocal to Chevron Corporation. Plaintiffs alleged that Unocal's management failed to obtain the highest share price reasonably available by tailoring the proposed acquisition terms to meet the specific needs of acquirer Chevron, and by discouraging alternative bids. After obtaining broad expedited discovery, the firm was credited for helping Unocal shareholders to realize $500 million in additional consideration as a result of Chevron's increased bid of $17.4 billion. The firm also secured supplemental proxy statement disclosures before Unocal shareholders voted on whether to accept Chevron's bid over a nominally higher bid by the Chinese National Offshore Oil Corporation.

- ***In re Titan, Inc. Sec. Litig.***, No. 04-CV-0676-LAB (NLS) (S.D. Cal. Dec. 20, 2005): The firm served as co-lead counsel in this securities fraud class action against The Titan Corporation and certain of its officers and directors for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and breach of fiduciary duty. Robbins Arroyo LLP's efforts resulted in a recovery of $61.5 million for Titan's shareholders.

- ***In re Tenet Healthcare Corp. Derivative Litig.***, No. 01098905 (Cal. Super Ct.-Santa Barbara Cnty. May 5, 2006), *aff'd*, No. B192252 (Cal. App. Sept. 20, 2007): The firm served as co-lead counsel for the plaintiffs, who alleged that Tenet Healthcare Corp.'s top executives breached their fiduciary duties to the company by failing to monitor, investigate, and oversee Tenet's patient procedures, Medicare billing, and accounting practices. After prosecuting the case for over three years, Robbins Arroyo LLP's attorneys negotiated a comprehensive settlement, which included $51.5 million in cash contributions to Tenet and sweeping corporate governance reforms and other remedial measures designed to ensure the independence and accountability of the company's board of directors. The new governance regime included separation of the positions of chief executive officer and chairman of the board of directors, strict internal financial controls, enhanced guidelines for stock ownership and stock retention, and a comprehensive insider trading policy. The settlement was upheld on appeal.

- ***In re Qwest Sav. & Inv. Plan ERISA Litig.***, No. 02-cv-00464 (D. Colo. Jan. 29, 2007): Robbins

Arroyo LLP served on plaintiffs' executive committee in a class action brought as a civil enforcement suit for ERISA violations. The employees alleged that Qwest’s management repeatedly misrepresented the financial status of the company to its employees to encourage employees to make discretionary investments in Qwest common stock. When the truth about Qwest’s financial condition and egregious accounting manipulations was revealed, the price of Qwest common stock plummeted, but employees were restricted from selling their retirement fund shares under the terms of the Qwest Savings & Investment Plan. When the restriction was lifted, Qwest stock was trading at an all-time low, devastating the employees' retirement funds. After years of contentious litigation, Robbins Arroyo LLP helped achieve a $37.5 million settlement for the benefit of the employees who had invested in the retirement plan.

- ***Staehr v. Walter***, No. 02-CVG-11-0639 (Ohio Ct. C.P.-Del. Cnty. Dec. 17, 2007) (hereinafter *Cardinal Health*): Robbins Arroyo LLP led the charge in derivative litigation on behalf of the plaintiff who brought claims against certain Cardinal officers and directors arising out of Cardinal's proposed stock-for-stock acquisition of Syncor International Corp. The action forced Cardinal to reduce the previously negotiated acquisition price for Syncor, saving the company millions of dollars. During the course of its work on the Syncor transaction, Robbins Arroyo LLP and other firms discovered that Cardinal insiders had engaged in a massive revenue inflation scheme to fraudulently overstate the company's financial performance. Robbins Arroyo LLP filed an amended complaint against several of Cardinal's officers and directors, defeated multiple motions to dismiss, and pursued and reviewed millions of pages of documents in discovery. The firm ultimately negotiated and resolved the matter by obtaining $70 million for the company—among the largest monetary recoveries ever in a shareholder derivative action. The settlement also required Cardinal's board of directors to implement significant corporate governance and internal accounting controls designed to improve the board's oversight of Cardinal's senior management and to prevent recurrence of the alleged accounting manipulations.

- ***In re Juniper Networks, Inc. Derivative Litig.***, No. 1:06-CV-064294 (Cal. Super. Ct.-Santa Clara Cnty. Dec. 4, 2008): Robbins Arroyo LLP served as co-lead counsel in this state shareholder derivative suit against several officers and directors of Juniper Networks, Inc., a global networking and communications technology company, for breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, insider selling, accounting, and rescission in connection with a stock option backdating scheme. After extensively prosecuting the case, the firm helped secure substantive corporate governance reforms and the forfeiture of more than $22 million in stock options to the company from four executives and directors of the board.

- ***In re KB Home S'holder Derivative Litig.***, No. 2:06-CV-05148-FMC (CTx) (C.D. Cal. Feb. 9, 2009): Robbins Arroyo LLP served as co-lead counsel for the plaintiffs, who alleged that insiders of KB Home, Inc., a prominent builder of single family homes in the United States and France, manipulated their stock option grant dates to misappropriate millions of dollars in illicit compensation. Robbins Arroyo LLP's efforts helped return nearly $50 million in value to the company, including a cash payment of over $31 million. In addition, the firm helped KB Home secure corporate governance enhancements and implement remedial measures, including separation of the chairman of the board and chief executive officer positions; declassification of the board of directors; majority voting for elections to the board; adoption of formal written procedures for the grant of stock options; and limits on future executive severance payments, among others.

- ***Overby v. Tyco Int'l Ltd.***, No. 02-CV-1357-B (D.N.H. Nov. 23, 2009): Robbins Arroyo LLP represented a class of employees of Tyco International Ltd., the largest electronics security provider in the world, when employees brought claims against the company for ERISA violations. Robbins Arroyo LLP helped obtain a $70 million settlement for the beneficiaries of Tyco's defined contribution retirement plan.

- ***In re Brocade Communications Systems, Inc. Derivative Litigation***, No. 1:05CV041683 (Cal. Super. Ct.-Santa Clara County Jan. 28, 2010): Robbins Arroyo LLP represented plaintiffs in this shareholder derivative action against officers and directors of Brocade Communications Systems, Inc.,

an industry leader in data center networking solutions, following the announcement that Brocade would have to restate two fiscal years of financial statements to correct its improper accounting for stock-based compensation expenses. For years, Brocade's insiders had engaged in a secret stock option backdating scheme designed to reward executives and recruit engineers with stock options priced below their fair market value as of the date of the grants. Robbins Arroyo LLP successfully petitioned the court to proceed with litigation to prevent an inadequate settlement of a related federal action, which would have released the officers, directors, and agents of the company responsible for the criminal backdating scheme for no money to the company nor a payment of attorney's fees, even as the U.S. Government pursued and ultimately won criminal convictions against the responsible executives. After almost three years of diligently prosecuting the case, during which Robbins Arroyo LLP engaged in extensive motion practice, reviewed approximately three million pages of documents, and marshaled evidence from related cases involving the conduct at Brocade, Brocade's Special Litigation Committee retained Robbins Arroyo LLP to serve as its co-counsel, and, after presentations from Robbins Arroyo LLP, authorized the continued prosecution of claims against Brocade's officers and directors and on behalf of the shareholders.

- ***In re PETCO Animal Supplies, Inc. S'holder Litig.***, No. GIC 869399 (Cal. Super. Ct.-San Diego Cnty. Mar. 26, 2010): Robbins Arroyo LLP served as co-lead counsel to the public shareholders of PETCO Animal Supplies, Inc., in a class action that sought to enjoin PETCO's insiders, directors, and affiliates from consummating any sale of PETCO unless and until the company implemented a procedure to ensure that PETCO's shareholders received the highest possible price for the sale. Over the course of three years, our attorneys engaged in extensive motion practice and document, expert, and witness discovery. Shortly before the case went to trial, Robbins Arroyo LLP assisted in achieving a settlement that secured a $16 million settlement fund for the class.

- ***In re Wireless Facilities, Inc. Derivative Litig.***, No. 04-CV-1663-JAH-(NLS) (S.D. Cal. Mar. 30, 2010): The firm served as co-lead counsel in the derivative action on behalf of an independent provider of security systems engineering for the wireless communications industry and, after more than five years of hard fought litigation, achieved a comprehensive settlement that required certain officers to forfeit significant amounts of stock and/or stock options back to the company, restricted voting rights for certain former officers and directors, secured monetary reimbursement to the company, and implemented a number of important changes to the company's corporate governance, such as the addition of two independent directors to the board and an annual review of the chairman's performance.

- ***In re Am. Int'l Group, Inc. Derivative Litig.***, No. 04 Civ. 8406 (DLC) (S.D.N.Y. Mar. 14, 2011): The firm was appointed lead counsel in the consolidated federal action alleging breach of fiduciary duty claims in connection with a bid-rigging scheme with Marsh & McLennan Companies, Inc., sham reinsurance transactions with General Re Corporation, and other activities intended to falsify American International Group, Inc.'s ("AIG") financial results. As part of a global settlement of the derivative claims on AIG's behalf, Robbins Arroyo LLP helped secure a $90 million payment to AIG, one of the largest monetary recoveries in the history of shareholder derivative actions.

- ***Kloss v. Kerker***, No. 50-2010-CA-018594-XXXX-MB (Fla. Cir. Ct.-Palm Beach Cnty. May 27, 2011): Robbins Arroyo LLP worked with the parties to derivative litigation filed on behalf of the Internet's leading vitamin and supplement retailer, Vitacost.com, Inc., to save the $158 million market cap company from bankruptcy and to preserve the equity interests of its shareholders. Robbins Arroyo LLP was instrumental in achieving a settlement that enabled the company to bring its financial statements and Security and Exchange Commission ("SEC") filings current; allowed Vitacost to hold a long overdue shareholder meeting to address fundamental defects in the corporation's formation, board composition, and past stock issuances; and helped the company to persuade NASDAQ to lift its trading moratorium and provide the company and its shareholders access to the capital markets. The firm worked with the company's new board of directors to implement a series of corporate governance best practices, including a robust insider trading policy. Vitacost hired Robbins Arroyo LLP to evaluate and potentially to prosecute the company's claims against other parties relating to the defects in its

formation, stock issuances, and other pre-IPO issues.

- ***Martinez v. Toll (Toll Bros., Inc.)***, No. 2:09-cv-00937-CDJ (E.D. Pa. Mar. 27, 2013); *Pfeiffer v. Toll*, No. 4140-VCL (Del. Ch. Mar. 15, 2013): Robbins Arroyo LLP represented shareholders in the Toll Brothers, Inc. shareholder derivative litigation in which plaintiffs alleged that certain company officers and directors, including the co-founders, traded on inside information and grossly misled investors about company earnings projections during a housing market downturn. After four years of contentious litigation, the firm helped secure one of the largest *Brophy* (*Brophy v. Cities Serv. Co.*, 70 A.2d 5 (Del. Ch. 1949)) settlements ever, a $16.25 million cash payment to the luxury homebuilding company. The settlement included a $6.45 million payment from the executive directors—an unprecedented result in shareholder litigation of this type.

- ***Cook v. McCullough***, No. 1:11-cv-09119 (N.D. Ill. Jan. 28, 2014): Robbins Arroyo LLP served as co-lead counsel in shareholder derivative litigation arising out of Career Education Corp.'s alleged publication of false statements regarding job placement and student loan repayment rates, and failure to ensure compliance with Title IV regulations. The firm played a leading role in negotiating the global resolution of a series of actions brought against and on behalf of the company, and helped secure a $20 million recovery and comprehensive board and management-level corporate governance and oversight reforms for Career Education, including enhanced compliance and whistleblower policies, new director independence standards, improved executive compensation claw-back provisions, a comprehensive director education and employee training program, and an improved regulatory risk management and disclosure regime.

- ***Espinoza v. Zuckerberg, C.A.*** No. 9745-CB (Del. Ch. Mar. 30, 2016): Robbins Arroyo LLP served as counsel in shareholder derivative litigation on behalf of Facebook, Inc. arising from the alleged award of unfair excessive compensation by the board of directors to its non-employee members. Certain members of Facebook's board of directors attempted to circumvent corporate law procedures to obtain controlling stockholder approval of compensation awarded by the Board to its non-employee members. After deposing Facebook's Chief Executive Officer Mark Zuckerberg and beating a motion for summary judgment, Robbins Arroyo LLP convinced Facebook to impose corporate governance reforms designed to ensure the Board awards executive compensation fairly and not to the detriment of the company, including allowing stockholders to vote on non-employee directors' compensation. As such, Robbins Arroyo LLP helped established that public companies with controlling stockholders must comply with corporate law procedures.

- ***In re Venoco, Inc. S'holder Litig.***, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016)**:** Robbins Arroyo LLP served as co-lead counsel to the public shareholders of Venoco, Inc. in this class action arising out of a scheme by the energy company's Chief Executive Officer to buy out Venoco's minority shareholders at an inadequate share price. Robbins Arroyo LLP conducted extensive fact and expert discovery for two years after the closing of the acquisition. During this time, Venoco foundered due to a decline in the price of oil, a burst pipeline, and additional debt from the acquisition, which ultimately led the company to file for bankruptcy. Amidst the company's demise, the firm achieved a settlement fund of $19 million for shareholders—a significant recovery in light of Venoco's dire financial circumstances. The court noted that this settlement represented a 5.2% increase in the consideration received by the shareholders over the $12.50 share price in the merger consideration, an increase greater than recent settlements of this type. At the final approval hearing, the Honorable Sam Glasscock III, Vice Chancellor, in the Court of Chancery of the State of Delaware, touted the settlement as a "good result for all" and "very fortunate for the class," and noted Robbins Arroyo LLP as "excellent counsel." Transcript of Proceeding at 19, 22, *In re Venoco, Inc. S'holder Litig.*, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016).

- ***In re Fifth Street Finance Corp. Shareholder Derivative Litigation***, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016): Robbins Arroyo LLP served as lead counsel in shareholder derivative litigation brought on behalf of Fifth Street Finance Corp. to challenge alleged conflicts of interest in Fifth Street's relationship with its investment advisor, FSAM. Plaintiffs alleged that certain Fifth Street

and FSAM officers and directors caused Fifth Street to make reckless investments, use bogus accounting, and pay excessive fees to inflate FSAM's perceived value in the lead up to FSAM's initial public offering. The firm's settlement negotiations resulted in advisory fee reductions worth at least $30 million and comprehensive corporate governance, oversight, and conflicts management enhancements.

- ***In re Community Health Systems, Inc. Shareholder Derivative Litig***., No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017): Serving as co-lead counsel against the officers and directors of Community Health, Inc. in shareholder derivative litigation alleging that the fiduciaries systematically steered patients into medically unnecessary inpatient admissions when they should have been treated as outpatient, Robbins Arroyo LLP was instrumental in obtaining what is believed to be the largest shareholder derivative recovery in the Sixth Circuit to date. After five years of contentious litigation and discovery, defendants agreed to settle the case, which included a $60 million cash payment to Community Health and the implementation of extensive corporate governance reforms, including board modifications to ensure director independence, improved internal disclosure policies to allow for the confidential reporting of suspected violations of healthcare laws, and the establishment of a Trading Compliance Committee to ensure compliance with Community Health's insider stock trading policy, among others.

- ***In re Saba Software, Inc. Stockholder Litig***. C.A., No. 10697-VCN (Del.Ch.Sept. 26, 2018): Robbins Arroyo LLP served as lead counsel in this shareholder class action in the Delaware Chancery Court against the officers and directors of Saba Software, Inc. for breaches of fiduciary duties related to the buyout of Saba by Vector Capital Management. Plaintiffs alleged that because the company was facing mounting financial concerns, including delisting by the U.S. Securities and Exchange Commission and a failure to complete its internal review of the accounting treatment of certain international transactions, defendants chose to sell the company in a flawed and self-serving sales process in exchange for inadequate merger consideration of Saba shareholders. After three and a half years of litigation, including extensive discovery, mediation, and a lengthy settlement negotiation process, defendants agreed to pay Saba's former shareholders $19.5 million. In approving the settlement, Vice Chancellor Slights called Robbins Arroyo's representation of the class "exemplary" and touted the settlement as a "strong recovery for the class."

Awards & Recognition

For its achievements, Robbins Arroyo LLP and our attorneys have received numerous accolades, including:

- Best Law Firm, *U.S. News & World Report* (2017-2018)
- Leading Firm in Merger and Acquisition Litigation, *Legal 500* (2013-2018)
- Top 20 Settlements in California (2017)
- Top 25 Boutique Law Firm in California, *Daily Journal* (2015)
- Litigation Boutiques Hot List, *National Law Journal* (2012)
- Among Top Shareholder Plaintiffs' Firms by ISS's Securities Class Action Services
- 10 attorneys named to *Super Lawyer* lists (2018)
- Top 50 Attorney in San Diego, *Super Lawyers* (2018) (George C. Aguilar, Brian J. Robbins)
- Top 50 Attorney in San Diego, *Super Lawyers* (2017) (George C. Aguilar)
- Top 50 Attorney in San Diego, *Super Lawyers* (2016) (George C. Aguilar, Felipe J. Arroyo, Brian J. Robbins)
- Top 50 Attorney in San Diego, *Super Lawyers* (2014) (Brian J. Robbins)
- Best Lawyers in America for Securities Litigation, *Best Lawyers* (2016-2018) (Brian J. Robbins)
- Best of the Bar, *San Diego Business Journal* (2016) (Brian J. Robbins, Jenny L. Dixon)
- Top Attorney, *The Daily Transcript* (2015) (Brian J. Robbins)
- Best Overall Lawyer in San Diego, *Fine Magazine* (2016) (Brian J. Robbins)
- Attorney of the Year, SD La Raza (2014) (George C. Aguilar)

Robbins Arroyo LLP's achievements in the courtroom have been recognized by a number of respected jurists. We feature a selection of commendations below.

- *"The quality of representation by the Derivative Plaintiffs' Counsel was witnessed first hand by this Court through their articulate, high quality, and successful pleadings. Moreover, as shown by their excellent efforts in this case, Derivative Plaintiffs' Counsel are dedicated to vindicating the rights of shareholders …."*

  Honorable Ed Kinkeade, Judge of the U.S. District Court for the Northern District of Texas, *In re Heelys, Inc. Derivative Litig.***,** No. 3:07-CV-1682-K

- *"I think you've actually set the bar kind of high for future settlements. This looks like an excellent result for the various class members in both the derivative action and the other action.... And it's to the credit of the lawyers that they were able to achieve this result before a lot of discovery and a lot of expenses were undertaken ... And so, I would be quite delighted and satisfied to make the necessary findings that this is an excellent settlement for plaintiffs."*

  Honorable Robert S. Lasnik, Judge of the U.S. District Court for the Western District of Washington, *In re Cutter & Buck Sec. Litig.*, No. C02-1948L

- Robbins Arroyo LLP's lawyers proved *"competent, experienced, [and] trustworthy."*

  Honorable Larry A. Burns, Judge of the U.S. District Court for the Southern District of California, *In re Sequenom, Inc. Derivative Litig.*, No. 09CV1341-LAB (WMC)

- *"Class counsel is highly experienced in bringing both class actions and derivative claims" and have "a nationwide reputation for handling shareholder derivative litigation, various class actions, and complex litigation…. Throughout the litigation, [class counsel] has shown themselves to be capable and qualified to represent the class."*

  Honorable Darla Williamson, Judge of the Fourth Judicial District of the State of Idaho, County of Ada, *Carmona v. Bryant*, CV-OC-0601251

- *"The court also notes that the settlement appears to place the shareholders in a much better position than that which existed prior to the beginning of this litigation."*

  Honorable John A. Houston, Judge of the U.S. District Court for the Southern District of California, *In re Wireless Facilities Inc., Derivative Litig.*, No. 04-CV-1663 JAH (NLS)

- *"I have high regard for … your firm."*

  Honorable James P. Kleinberg, Judge of the Superior Court of California, County of Santa Clara, *In re Altera Corp. Derivative Litig.,* No. 1-06-CV-063537

- *"[W]e had … competent counsel who were able to reach a very handsome settlement for the shareholders who were working here on behalf of the shareholders interests."*

  Honorable Denise de Bellefeuille, Judge of the Superior Court of California, County of Santa Barbara, *In re Tenet Healthcare Corp. Derivative Litig.*, No. 01098905

- *"Thank you very much for the good work that you all did. And I think that your stockholders will appreciate it, too."*

  Honorable Sophia H. Hall, Judge of the Circuit Court of Cook County, Illinois, *In re Nicor, Inc. S'holder Derivative Litig.*, No. 02CH 15499

- *"Thank you for your good work on behalf of your clients. I appreciate it."*

  Honorable Thomas Barkdull, Circuit Judge of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, *Kloss v. Kerker*, No. 50-2010-CA-018594-XXXX-MB

- *"I want to tell you what a pleasure it is dealing with talented counsel.... Thank you very much."*

  Honorable John G. Evans, Judge of the Superior Court for the State of California, Riverside County, *Hess v. Heckmann*, No. INC10010407

- *"I think the plaintiffs and their counsel did a good job pressing forward with this action and achieving a good result…. I think that all in all, [$16.25 million] is a good value, a significant benefit for the company."*

  Honorable J. Travis Laster, Vice Chancellor in the Court of Chancery of the State of Delaware, *Toll Bros.,* No. 2:09-cv-00937-CDJ and No. 4140-VCL

- *"It seems to me to be an excellent settlement in light of all the circumstances: and "a good result for all." "[P]laintiffs' counsel [got] a result that I think is very fortunate for the class."*

  Honorable Sam Glasscock III, Vice Chancellor in the Court of Chancery of the State of Delaware, *In re Venoco, Inc. Shareholder Litigation,* C.A. No. 6825-VCG

- *"I think y'all have done a great job pulling this thing together. It was complicated, it was drawn out, and a lot of work clearly went into this…. I'll approve this settlement. I appreciate the work you all did on this. I think this is one where – I can't always say this … there is … benefit to the shareholders that are above and beyond money, a benefit to the company above and beyond money that changed hands."*

  Honorable Kevin H. Sharp, U.S. Chief District Judge, U.S. District Court for the Middle District of Tennessee Nashville Division, *In re Community Health Systems, Inc., Shareholder Derivative Litigation,* No. 3:11-cv-00489

- "[T]his recovery is a strong recovery for the class. And, it's one, again, that I think counsel should be commended for achieving.

  Honorable Joseph R. Slights, III, Vice Chancellor in the Court of Chancery of the State of Delaware, *In re Saba Software, Inc. Stockholder Litig., C.A. No. 10697-VCN*

PARTNERS

George C. Aguilar
Partner

Mr. Aguilar is a former federal prosecutor and trial lawyer who has tried more than forty federal criminal trials. He focuses his practice on complex litigation, including shareholder rights, securities, antitrust, and employment actions. Mr. Aguilar has successfully litigated numerous shareholder actions against fraudulent management and company insiders, and has secured meaningful corporate governance reforms at companies across the U.S. For example, in *Warner v. Lesar*, No. 2011-09567 (Tex. Dist. Ct.-Harris Cnty. Oct. 1, 2012), Mr. Aguilar led the firm's efforts on behalf of Halliburton Company arising from defendants' mismanagement of risk, controls, and operations that led to the worst oil spill in U.S. history at the Deepwater Horizon offshore drilling rig in the Gulf of Mexico. Navigating the case through the company's internal investigation, and difficult and complex settlement discussions and mediation sessions, Mr. Aguilar secured comprehensive health, safety, and environmental governance reforms. In shareholder derivative litigation on behalf of Maxwell

Technologies, Inc., *Loizides v. Schramm*, No. 37-2010-00097953-CU-BT-CTL (Cal. Super. Ct.-San Diego Cnty. Apr. 12, 2012), Mr. Aguilar helped secure a settlement in which the company adopted corporate governance and compliance measures addressing its violations of the Foreign Corrupt Practices Act (FCPA) after being investigated by federal agencies for bribery and subcontracting kickbacks. Of particular note is the creation of a new FCPA and Anti-Corruption Compliance department led by a Chief Compliance Officer to provide for greater effectiveness of Maxwell's board of directors in responding to FCPA compliance issues worldwide. In shareholder litigation involving Brocade Communications Systems, *In re Brocade Communications Systems, Inc., Derivative Litigation*, No. 1:05CV041683 (Cal. Super. Ct.-Santa Clara Cnty. Jan. 28, 2010), the firm prosecuted the shareholder action involving a criminal options backdating scheme at Brocade until the company formed a Special Litigation Committee to consider the plaintiffs' claims. A key player in the prosecution of the action, Mr. Aguilar successfully presented facts and law to the Special Litigation Committee on behalf of the firm's shareholder clients. Brocade ultimately retained the firm as co-counsel to prosecute its claims against Brocade's officers and directors.

Mr. Aguilar also led the firm's efforts as part of a consortium of plaintiff firms in a high profile antitrust class action suit, *Dahl v. Bain Capital Partners*, No. 1:07-cv-12388(WGY) (D. Mass. Mar. 17, 2015), against several private equity firms. The case involved allegations of conspiracy among defendants to rig bids, restrict the supply of private equity financing, fix transaction prices, and divide up the market for private equity services for leveraged buyouts. Robbins Arroyo LLP played a prominent role in this litigation, bearing the responsibility for building the case against a principal defendant, one of the largest private equity firms in the world. In doing so, Mr. Aguilar conducted several depositions of some of the key private equity principals during the initial discovery phase of the case. The defendants settled for more than $590 million.

Before joining Robbins Arroyo LLP, Mr. Aguilar spent 17 years as a federal prosecutor with the U.S. Attorney's Office in San Diego. During his tenure, Mr. Aguilar served as chief for the Terrorism, Violent Crimes, and General Prosecutions Section; deputy chief for the General Crimes Section; trial lawyer for the Financial Institution Fraud Task Force and the Major Frauds Sections; and as a supervising ethics officer. He led grand jury investigations and indicted and tried complex white collar criminal cases involving corporate, securities, bank, investor, tax, foreign currency and bankruptcy fraud, bank bribery, and money laundering, among others. He authored 35 appellate briefs, and argued more than a dozen cases on appeal before the U.S. Court of Appeals for the Ninth Circuit. For his work, Mr. Aguilar received several awards of recognition from the U.S. Department of Justice and federal agencies, including the prestigious Director's Award of the Executive Office for U.S. Attorneys. Prior to joining the U.S. Attorney's Office, Mr. Aguilar worked on complex securities defense litigation at Morrison & Foerster LLP's San Francisco office.

Mr. Aguilar is a recognized leader in the legal and civic communities. He writes and speaks on topics related to shareholder litigation and corporate governance. He currently serves on the Board of Governors for the Association of Business Trial Lawyers of San Diego and is an active member of the San Diego La Raza Lawyers Association and San Diego County Bar Association. He has served in top leadership positions at La Raza Lawyers Association of California, San Diego La Raza Lawyers Association, the State Bar of California, and the City of San Diego. Mr. Aguilar was honored as a Super Lawyers Top 50 attorney in San Diego (2016-2018) and has been named a Super Lawyer for seven consecutive years (2012-2018). He is also the recipient of the Attorney of the Year Award from San Diego La Raza Lawyers Association (2014) and has received the San Diego Mediation Center's Peacemaker Award for his community service work.

Mr. Aguilar received his law degree in 1986 from the University of California, Berkeley School of Law. While in law school, he served on the Moot Court Board and was managing editor of the *La Raza Law Journal*. Mr. Aguilar graduated from the University of Southern California in 1983 with a Bachelor of Arts in both Political Science and Journalism. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the Eastern District of Wisconsin, and the District of Colorado, as well as the U.S. Courts of Appeals for the Second, Ninth, and Tenth Circuits, and the U.S. Supreme Court.

Felipe J. Arroyo
Partner

Mr. Arroyo has over 25 years of litigation experience and concentrates his practice on complex shareholder litigation. He has helped secure results for shareholders and companies in high-profile shareholder derivative suits and securities class actions, and has represented shareholders in a variety of industries including insurance, finance, banking, technology, and pharmaceuticals. He has successfully litigated derivative cases against top executives of publicly traded companies who participated in a range of misconduct, including stock option backdating, the global subprime meltdown, misappropriation, insider trading, and various types of false or misleading statements. He has also litigated cases stemming from mergers and acquisitions in a variety of industries.

Litigation teams led by Mr. Arroyo have recovered hundreds of millions of dollars for companies and shareholders. For example, Mr. Arroyo played an instrumental role in recovering $70 million for Cardinal Health shareholders in *Staehr v. Walter*, No. 02-CVG-11-0639 (Ohio Ct. C.P.-Del. Cnty. Dec. 17, 2007), which resulted in one of the largest shareholder derivative monetary recoveries in history. In *In re KB Home S'holder Derivative Litig.*, No. 2:06-CV-05148-FMC (CTx) (C.D. Cal. Feb. 9, 2009), Mr. Arroyo helped obtain a $30 million cash benefit for KB Home shareholders, as well as the implementation of preventative corporate governance measures. In *Martinez v. Toll*, No. 2:09-cv-00937-CDJ (E.D. Pa. Mar. 27, 2013), Mr. Arroyo served as co-lead counsel in shareholder derivative litigation against the directors of luxury home builder Toll Brothers, Inc. The case arose out of misrepresentations about company earnings projections and insider trading by the company's officers and directors. After four years of contentious litigation and myriad discovery, Mr. Arroyo helped secure one of the largest *Brophy* settlements ever, a $16.25 million cash payment for the company, including a $6.45 million payment from the executive directors.

Prior to joining Robbins Arroyo LLP, Mr. Arroyo practiced complex commercial litigation for over a decade at a prominent Los Angeles-based law firm. There he represented a diverse client base of Fortune 500 companies. An experienced trial lawyer, Mr. Arroyo also directed a public/private partnership called the Trial Advocacy Prosecution Program (TAPP), during which he supervised, trained, and advised attorneys on trial strategy and practice while they litigated misdemeanor jury trials on a *pro bono* basis for a municipal client. Mr. Arroyo also served as general counsel to a fitness company for two years where he successfully prosecuted a global patent infringement litigation campaign, and he practiced complex commercial litigation, including litigating securities fraud cases, while with a prominent New York-based law firm.

Mr. Arroyo is Co-Chair of the Class Actions & Derivative Suits Subcommittee for the American Bar Association's Section of Litigation and previously served as a member of the Board of Governors at the Association of Business Trial Lawyers in San Diego (2012-2014). He frequently speaks on shareholder litigation and corporate governance topics to investor and legal communities. Mr. Arroyo was recognized as a Super Lawyer (2015-2018), named a Super Lawyers Top 50 attorney in San Diego (2016), and a Recommended Attorney in M&A Litigation by Legal 500 (2016).

Mr. Arroyo earned his Juris Doctor from Yale Law School in 1992. While at Yale, he served as a senior editor of the *Yale Law Journal* and as a director of the Yale Moot Court of Appeals. In 1989, he earned his Bachelor's in Economics from the University of California, Los Angeles, where he served as a member of the A.S.U.C.L.A Finance Committee. Mr. Arroyo is licensed to practice law in the State of California and the District of Columbia, and has been admitted to the U.S. District Courts for the Northern and Central Districts of California and the District of Colorado, as well as the U.S. District Courts of Appeals for the Second and Ninth Circuits.

Gregory E. Del Gaizo
Partner

Mr. Del Gaizo focuses his practice on shareholder rights litigation. As the head of Robbins Arroyo LLP's new matters practice group, he initiates and oversees pre-litigation investigations and analysis of new cases for the firm. Mr. Del Gaizo has prosecuted shareholder litigation that recouped over one hundred million dollars and secured extensive corporate governance reforms and other pro-investor measures at companies in which his

clients invest.

Mr. Del Gaizo's successes on behalf of clients include leading the discovery process for Robbins Arroyo LLP in litigation on behalf of luxury homebuilder Toll Brothers, Inc., which resulted in a $16.25 million settlement, one of the largest *Brophy* monetary recoveries ever. *Martinez v. Toll*, No. 2:09-cv-00937-CDJ (E.D. Pa. Mar. 27, 2013). He was also a member of litigation teams in *Staehr v. Walter*, No. 02-CVG-11-0639 (Ohio Ct. C.P.-Del. Cnty. Dec. 17, 2007), which secured a payment of $70 million to Cardinal Health, and *In re KB Home S'holder Derivative Litig.*, No. 2:06-CV-05148-FMC (CTx) (C.D. Cal. Feb. 9, 2009), which obtained $30 million in cash benefits and substantial corporate governance reforms for the home builder.

Mr. Del Gaizo has authored several articles on securities litigation, including *State Law Insider Trading Claims See New Light*, The Recorder, July 1, 2011; *Directors and Officers Can't Hide in Del.,* Securities Law360, Jan. 14, 2011; *Control of Forum in Derivative Actions*, The Recorder, Dec. 10, 2010; and *Clearing the Path for Double Derivative Suits*, The Recorder, Nov. 1, 2010. He also speaks to audiences about shareholder rights, and was recognized as a Rising Star by Super Lawyers (2015-2016) and a Recommended Attorney in M&A Litigation by Legal 500 (2016).

Mr. Del Gaizo obtained his Juris Doctor degree in 2006 from the University of San Diego School of Law. While in law school, Mr. Del Gaizo served as a research assistant to Frank Partnoy, director of the Center for Corporate and Securities Law at the University of San Diego, and as an intern at Kim & Chang, the largest law firm in Korea. Mr. Del Gaizo attended Providence College and, while there, interned for the New York City Law Department. He graduated *cum laude* in 2003 with a Bachelor of Arts degree in Political Science. Mr. Del Gaizo is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Central and Southern Districts of California and the District of Colorado.

Jenny L. Dixon
Partner

Ms. Dixon concentrates her practice on shareholder rights litigation. She has approximately 20 years of litigation experience, with more than 15 years devoted to prosecuting and defending securities claims from inception through trial. In 2016, Ms. Dixon successfully settled two cases that challenged corporate governance and processes surrounding non-employee director compensation. In *Espinoza v. Zuckerberg*, CA No. 9745-CB (Del. Ch. Mar. 30, 2016), Ms. Dixon served as counsel in shareholder derivative litigation on behalf of Facebook, Inc. arising from the alleged award of unfair excessive compensation by the board of directors to its non-employee members. After deposing Facebook's Chief Executive Officer, Mark Zuckerberg, and beating a motion for summary judgment, Ms. Dixon helped convince Facebook to impose corporate governance reforms designed to ensure the Board awards executive compensation fairly and not to the detriment of the company, including allowing stockholders to vote on non-employee directors' compensation. In *Calma v. Templeton*, No. 9579-CB (Del. Ch. Sept. 2, 2016), Ms. Dixon led the shareholder derivative litigation on behalf of Citrix Systems, Inc. against its fiduciaries for breach of fiduciary duty, waste of corporate assets, and unjust enrichment related to equity awards granted in 2011–2013. As part of the settlement, Citrix amended its equity plan to impose a ceiling on director compensation that would be subject to shareholder approval, enhance disclosures surrounding director compensation in the annual proxy statements, and improve the Compensation Committee's processes.

Prior to joining Robbins Arroyo LLP, Ms. Dixon worked at national law firms in the San Francisco and San Diego areas. She has experience representing individuals and companies in regulatory proceedings, including responses to inquiries by the SEC and the Financial Industry Regulatory Authority. In addition to securities litigation, Ms. Dixon has substantial experience in business litigation and employment cases. Active in pro bono matters, Ms. Dixon successfully resolving a human trafficking case on a victim's behalf prior to trial and secured a multi-million dollar jury verdict in a human rights case that was subsequently upheld on appeal.

Ms. Dixon was honored by *San Diego Business Journal* as Best of the Bar in 2016, and is a member of the Board of Governors for the Association of Business Trial Lawyers and the Class Action Preservation Project Committee for the Public Justice Foundation.

Ms. Dixon obtained her Juris Doctor degree from the University of California, Hastings College of the Law. While in law school, Ms. Dixon was associate articles editor for *Hastings Communications & Entertainment Law Journal* and a Certified Law Student for the Civil Justice Clinic. Ms. Dixon also worked as a judicial extern for the Honorable William W. Schwarzer of the U.S. District Court for the Northern District of California and as a law clerk for the Federal Public Defenders office for the Northern District of California. Ms. Dixon earned a Bachelor of Arts degree in Political Science from the University of California, Irvine, where she was named to the Dean's List. She is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California and the U.S. Courts of Appeals for the Sixth, Ninth, and Eleventh Circuits.

Stephen J. Oddo
Partner

Mr. Oddo has devoted his practice to representing individual and institutional shareholders in corporate merger and acquisition class actions for more than a decade. In so doing, he has secured tens of millions of dollars of additional consideration for shareholders whose investments have been adversely impacted by corporate transactions. Mr. Oddo has also achieved disclosure of material information to shareholders so they are informed on the transaction at the time of the vote. His litigation efforts have helped preserve the integrity of the merger process in companies across the country and helped maximize value to shareholders. For his excellence in practice, Mr. Oddo was named a Super Lawyer (2016-2018) and a Recommended Attorney in M&A Litigation by Legal 500 (2016, 2018).

Serving as lead counsel in *In re Saba Software, Inc. Stockholder Litig*. C.A. No. 10698-VCN, Mr. Oddo secured a $19.5 million settlement on behalf of former Saba Software shareholders in a class action alleging the company had engaged in a flawed and self-serving sales process in exchange for inadequate merger consideration for Saba Software shareholders. The court acknowledged that the settlement was "exemplary" and a "strong recovery for the class." In *In re Venoco, Inc. S'holder Litig.*, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016), Mr. Oddo, serving as co-lead counsel to the public shareholders of the energy company, achieved a $19 million settlement fund for shareholders – a significant recovery in light of Venoco's dire financial circumstances. Mr. Oddo earned praise from the judge for securing a "good result for all" and noted Robbins Arroyo LLP as "excellent counsel." Mr. Oddo secured a $5.9 million settlement fund as lead counsel in *In re Star Scientific, Inc. Securities Litig.,* No. 3:13-CV-00183-JAG (E.D. VA July 6, 2015), a securities fraud class action alleging that defendants made materially false and misleading statements regarding one of the company's clinical trials. In *In re PETCO Animal Supplies, Inc. S'holder Litig.*, Lead Case No. GIC 869399 (Cal. Super. Ct.-San Diego Cnty. Mar. 26, 2010), Mr. Oddo helped secure a $16 million settlement fund for the shareholder class after three years of contentious litigation. At his former firm, Mr. Oddo represented shareholders of eMachines, Inc., in *In re eMachines, Inc. Merger Litigation*, No. 01-CC-00156 (Cal. Super. Ct.-Orange Cnty. July 25, 2007), in challenging the efforts of the company's founder to take the company private. Mr. Oddo's litigation efforts helped secure a $24 million common fund for shareholders. In the merger and acquisition-related securities class action *In re Electronic Data Systems Class Action Litigation*, Master File No. 366-01078-2008 (Tex. Dist. Ct.-Collin Cnty. Dec. 23, 2008), Mr. Oddo served as lead counsel and challenged the acquisition of Electronic Data Systems Corporation by Hewlett-Packard Company. Mr. Oddo negotiated a pre-closing settlement that secured for Electronic Data Systems shareholders a $25 million dividend and the disclosure of previously omitted material information concerning the transaction that allowed for an informed shareholder vote.

Prior to joining Robbins Arroyo LLP, Mr. Oddo was a partner at the firm now known as Robbins Geller Rudman & Dowd LLP, where Mr. Oddo was part of a team at the forefront of litigating shareholder claims challenging unfair business combinations. Before entering the legal profession, Mr. Oddo served as Press Secretary to U.S. Representative Robert T. Matsui (D-Cal).

Mr. Oddo received his Juris Doctor in 1994 from the University of San Diego School of Law. During law school, he interned for the Honorable Eugene Lynch, U.S. District Judge in the Northern District of California. Mr. Oddo earned his Master of Science in Journalism from Northwestern University, Medill School of Journalism in 1987, and his Bachelor of Arts from Santa Clara University in 1986. Mr. Oddo is licensed to

practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the Northern District of Illinois, the Southern District of Texas, the Eastern District of Michigan, and the Eastern District of Wisconsin.

Brian J. Robbins
Partner

Mr. Robbins is a co-founder and the managing partner of Robbins Arroyo LLP and oversees the management of the firm and its practice areas. He has committed his entire career to representing shareholders, employees, consumers, and businesses in complex litigation matters. Focusing on shareholder rights litigation, Mr. Robbins has served as lead or co-lead counsel in many complex, multi-party actions across the country on behalf of U.S. and international clients. He has secured hundreds of millions of dollars in monetary recoveries and comprehensive corporate governance enhancements for shareholders and the public corporations in which they have invested.

In *Titan, Inc. Securities Litigation,* No. 04-CV-0676-LAB (NLS) (S.D. Cal. Dec. 20, 2005*),* Mr. Robbins helped obtain a $61.5 million recovery, one of the largest securities fraud class action recoveries in San Diego's history, and in *In re Tenet Healthcare Corporation Derivative Litig*ation, No. 01098905 (Cal. Super Ct.-Santa Barbara Cty. May 5, 2006), *aff'd*, No. B192252 (Cal. App. Sept. 20, 2007), he helped recover $51.5 million for Tenet and sweeping corporate governance enhancements and remedial measures. In *In re OM Group, Inc. Derivative Litigation*, No. 1:03-CV-0020 (N.D. Ohio Nov. 10, 2005), Mr. Robbins secured $29 million for OM Group, the removal of the company's long term chief executive officer, the addition of two shareholder-nominated directors, and other corporate governance reforms, and in *In re Wireless Facilities, Inc. Derivative Litigation*, No. 04-CV-1663-JAH-(NLS) (S.D. Cal. Mar. 30, 2010), Mr. Robbins was instrumental in obtaining the forfeiture of stock and/or stock options back to the company by certain officers, restricted voting rights for certain former officers and directors, monetary reimbursement to the company, and corporate governance reforms, such as the addition of two independent directors to the board and an annual review of the chairman's performance. Mr. Robbins was also instrumental in achieving an extraordinary settlement on behalf of his shareholder client in *Kloss v. Kerker*, No. 50-2010-CA-018594-XXXX-MB (Fla. Cir. Ct.-Palm Beach Cty. May 27, 2011), which virtually saved vitamin and supplement retailer Vitacost.com, Inc. from bankruptcy and helped to preserve the equity interests of its shareholders.

Mr. Robbins is recognized nationally as a leader in the plaintiffs' bar. He has authored articles in several national publications and speaks to audiences as an authority on securities litigation, corporate governance, and shareholder rights topics. For his leadership and achievements, he has been named a Super Lawyer for the past 12 years (2007–2018), Best of the Bar by *San Diego Business Journal* (2014–2016), and a Top 50 Attorney in San Diego by Super Lawyers (2014, 2016, 2018). He was also recognized by Best Lawyers in America for Securities Litigation (2016-2018), and a Top Attorney by *The Daily Transcript* (2015).

Mr. Robbins earned his Master of Laws (LL.M.) in Securities and Financial Regulation from the Georgetown University Law Center in 1998 and received his Juris Doctor from Vanderbilt Law School in 1997. While at Vanderbilt, Mr. Robbins served as research assistant for two corporate and securities law professors: Professor Donald C. Langevoort, former Special Counsel for the U.S. Securities and Exchange Commission in the Office of the General Counsel, and the late Professor Larry D. Soderquist, one of the most respected professors in the field of corporate and securities law. He earned his Bachelor of Arts in Sociology from the University of California, Berkeley in 1993 after only two and a half years of study. Mr. Robbins is licensed to practice law in the State of California and the State of Connecticut, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the District of Connecticut, and the Western District of Texas, as well as the U.S. Courts of Appeals for the Second, Fifth, Sixth, Ninth, and Tenth Circuits.

Ashley R. Rifkin
Partner

Ms. Rifkin has over 10 years of experience representing clients in complex litigation, including shareholder

rights, consumer class actions, and antitrust matters. She has helped achieve significant recoveries for shareholders in connection with securities class actions involving corporate mergers and acquisitions. For example, in *Fuerstenberg v. Mid-State Bancshares*, No. CV 060976 (Cal. Super. Ct.-San Luis Obispo County Oct. 4, 2007), Ms. Rifkin was part of the litigation team that obtained waivers of the "confidentiality" and "no-shop" provisions in the sale agreement, which enabled other suitors to participate effectively in the bidding process. In *In re HCA Inc. Derivative Litigation*, No. 3:05-CV-0968 (M.D. Tenn. Dec. 20, 2007), Ms. Rifkin was part of the litigation team that forced the disclosure of material information to shareholders before they voted on the proposed buyout by a private equity group and founding member.

Ms. Rifkin has litigated shareholder derivative actions on behalf of corporations and shareholders seeking to redress various forms of corporate misconduct including backdating and springloading practices, false and misleading public disclosures, improper Medicare and Medicaid billing practices, claims of off-label marketing, violations of the FCPA, and other state and federal law violations. She has helped achieve considerable monetary recoveries and corporate governance reforms for clients and companies through these actions. In *In re Community Health Systems Inc. Shareholder Derivative Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017), Ms. Rifkin was part of the team that brought shareholder derivative litigation against the officers and directors of Community Health Systems, Inc. alleging that the fiduciaries systematically steered patients into medically unnecessary inpatient admissions when they should have been treated as outpatient. Ms. Rifkin oversaw the extensive document review process and other aspects of discovery. Ms. Rifkin's team obtained a $60 million cash payment to Community Health and the implementation of extensive corporate governance reforms. In shareholder derivative litigation arising from Motorola Inc.'s publication of allegedly misleading statements regarding its next-generation cell phones and revenue projections, *In re Motorola, Inc. Derivative Litig.,* No. 07CH23297 (Ill. Cir. Ct.-Cook Cnty. Nov. 29, 2012), Ms. Rifkin helped negotiate comprehensive governance reforms that overhauled the company's oversight of financial disclosures and achieved structural reforms that better aligned director and executive compensation with long-term shareholder interests. Ms. Rifkin served alongside a team of plaintiff firms in antitrust litigation involving allegations of conspiracy among private equity firms to rig bids, restrict the supply of private equity financing, fix transaction prices, and divide up the market for private equity services for leveraged buyouts. *Dahl v. Bain Capital Partners*, No. 1:07-cv-12388 (WGY) (D. Mass. Mar. 17, 2015). The defendants settled for more than $590 million.

Ms. Rifkin was named a Super Lawyer Rising Star (2015-2016) and to the "Best Young Attorneys in San Diego County" list by *The Daily Transcript* (2011).

Ms. Rifkin received her Juris Doctor in 2006 from Thomas Jefferson School of Law. She graduated *summa cum laude* second in her class, was on the Dean's List, and received the Outstanding Scholastic Achievement Award for the 2004-2005 school year. While in law school, Ms. Rifkin served as a judicial extern for the Honorable David A. Workman in the Los Angeles Superior Court. She also was chief articles editor and notes editor of the *Thomas Jefferson Law Review* and vice president of operations of the Tax Society. Ms. Rifkin graduated from the University of California, Santa Barbara in 2002 with a Bachelor of Arts degree in Psychology. She is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, and the U.S. Courts of Appeals for the Ninth and Tenth Circuits.

Kevin A. Seely
Partner

Mr. Seely devotes his practice to representing shareholders, whistleblowers, and consumers in complex derivative, *qui tam*, and class actions throughout the U.S. A tenacious trial lawyer with more than 25 of litigation experience in both the public and private sectors and in criminal and civil fraud prosecutions, Mr. Seely has successfully prosecuted top corporate executives, high-ranking government officials, and corporate entities for a variety of wrongdoing, including theft of government services, bribery, embezzlement, and health care fraud.

Mr. Seely has achieved significant results for his clients. In *In re Community Health Systems, Inc. Shareholder Derivative Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017), serving as plaintiff's co-lead counsel, Mr.

Seely and his team were instrumental in obtaining a $60 million cash payment to Community Health, which is believed to be the largest shareholder derivative recovery in the Sixth Circuit to date, and extensive corporate governance reforms. The firm brought *In re Alphatec Holdings, Inc., Derivative Shareholder Litigation*, No. 37-2010-00058586-CU-BT-NC (Cal. Super. Ct.–San Diego Cnty. Aug. 21, 2014) on behalf of Alphatec Holdings, Inc. to hold the company's fiduciaries responsible for their role in depleting shareholder equity through their self-serving actions. Mr. Seely's efforts resulted in the resignation of several defendant directors and senior executives, and Alphatec's implementation of reforms providing for director independence, greater review and oversight of related party transactions, and enhanced audit committee responsibilities regarding disclosure of company financial information. In shareholder derivative litigation on behalf of Computer Sciences Corporation, *Bainto v. Laphen*, No. A-12-661695-B (Nev. Dist. Ct.-Clark Cnty. Nov. 6, 2013), arising out of senior management and board of directors' breaches of fiduciary duties, Mr. Seely obtained extensive governance enhancements, including personnel changes, implementation of a Global Ethics & Compliance Program, and finance and administration training to strengthen accounting procedures and processes. Mr. Seely's settlement in *In re SciClone Pharmaceuticals, Inc. Shareholder Derivative Litigation*, No. CIV 499030 (Cal. Super. Ct.-San Mateo Cnty. Dec. 13, 2011), was praised by the Honorable Marie S. Weaver as "the most detailed and extensive corporate governance changes I've seen in a derivative settlement," and established consequences to employees for violations of the FCPA and other criminal misconduct. The settlement also created the position of compliance coordinator and a compliance program and code, instituted a due diligence process pertaining to the hiring of all foreign agents and distributors and demanded employee compliance training, established policies for disclosure and clawback of incentive-based compensation for officers in the event of a material restatement of the company's financial statements, and modified the company's whistleblower programs. In *In re ArthroCare Corporation Derivative Litigation*, No. D-1-GN-08-003484 (W.D. Tex.); *Weil v. Baker*, No. 08-CA-00787-SS (W.D. Tex Dec. 8, 2011), Mr. Seely obtained a substantial monetary recovery for ArthroCare Corporation, as well as the implementation of enhanced internal controls and reforms designed to curtail future corporate misconduct.

Prior to joining Robbins Arroyo LLP, Mr. Seely served as an Assistant U.S. Attorney ("AUSA") in the U.S. District Court for the Southern District of California where he prosecuted civil fraud claims under the federal False Claims Act. He also served as an AUSA for the Districts of Guam and Northern Mariana Islands, focusing on white collar crime and public corruption matters. In actions filed on behalf of various U.S. federal agencies, Mr. Seely led the investigation, litigation, and negotiation of numerous settlements resulting in the return of millions of dollars to the victims of complex financial, accounting, and contract fraud schemes. Before becoming a federal prosecutor, Mr. Seely was a partner at a prominent commercial litigation law firm with offices in Guam and the Commonwealth of the Northern Mariana Islands.

Mr. Seely has authored articles in leading legal publications on shareholder and consumer rights topics, and was named a Super Lawyer for the past four years (2015–2018).

Mr. Seely received his Juris Doctor in 1992 from the Northwestern School of Law of Lewis & Clark College. While in law school, he was an associate editor of the *Lewis & Clark Law Review*. Mr. Seely graduated *cum laude* from the University of California, Irvine in 1988. He is licensed to practice law in the State of California, the territory of Guam, and the Commonwealth of the Northern Mariana Islands, and he has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the Northern District of Florida, the District of Guam, the Northern and Central Districts of Illinois, the Eastern District of Michigan, the District of the Northern Mariana Islands, and the Western District of Texas, as well as the U.S. District Court of Appeals for the Ninth Circuit.

Craig W. Smith
Partner

Mr. Smith represents shareholders in derivative and securities fraud class actions. His clients include shareholders invested in the banking and finance, biotechnology, defense, education, information technology, leisure, consumer goods, and pharmaceutical industries. Mr. Smith also serves as the firm's general counsel.

Mr. Smith has led the firm's prosecution of a number of successful actions brought directly on behalf of

shareholders and derivatively for the benefit of public corporations. In *In re Fifth Street Corp. Shareholder Derivative Litigation*, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016), Mr. Smith served as lead counsel in shareholder derivative litigation on behalf of Fifth Street to challenge alleged conflicts of interest in Fifth Street's relationship with its investment advisor after certain Fifth Street officers and directors caused the company to make reckless investments and pay excessive fees to inflate the investment advisor's perceived value in advance of its initial public offering. Mr. Smith led the settlement negotiations that resulted in advisory fee reductions worth at least $30 million and comprehensive corporate governance, oversight, and conflicts management enhancements. Mr. Smith and his team played a leading role in a shareholder derivative suit brought on behalf of Avon Products, Inc., *Pritika v. Jung*, No. 651479/2015 (N.Y. Sup. Ct. May 1, 2015), against certain officers and directors who plaintiffs allege turned a blind eye to bribes made in violation of the FCPA to secure the first foreign direct sales license in China. Mr. Smith led the negotiations that resulted in Avon's agreement to adopt a comprehensive corporate governance and compliance reform program. The *Wall Street Journal* praised the settlement as "a victory for shareholders looking for accountability from the business." Mr. Smith also played a leading role in shareholder derivative litigation brought on behalf of Career Education Corporation against officers and directors who plaintiffs alleged allowed its for-profit schools to falsify job placement and student loan repayment rates, fall short of accreditation standards, and jeopardize access to the Title IV federal student loan funds that account for the lion's share of its revenues. Mr. Smith and his co-counsel in *Alex v. McCullough*, No. 1:12-cv-08834 (N.D. Ill. Dec. 5, 2012); *Bangari v. Lesnik*, No. 1:11-CH-41973 (Ill. Cir. Ct.-Cook Cty. Dec. 11, 2011); and *Cook v. McCullough*, No. 1:11-cv-09119 (N.D. Ill. Dec. 22, 2011), negotiated a global settlement that secured a $20 million recovery for Career Education, as well as comprehensive board and management-level governance and oversight reforms.

Mr. Smith has played an important role in improving the quality of corporate governance and oversight at pharmaceutical and bio-technology companies. In *In re Forest Labs., Inc.*, *Derivative Litigation*, No. 1:05-cv-03489 (RJH) (S.D.N.Y. Feb. 7, 2012), Mr. Smith secured comprehensive regulatory oversight and compliance reforms to address the fallout resulting from Forest Lab's marketing of Celexa and Lexapro for off-label treatment of pediatric depression — violations that cost Forest Labs more than $313 million in fines and sanctions. The reforms included the creation of Chief of Compliance and Chief Medical Officer positions, board oversight and management-level oversight of sales and promotions compliance, comprehensive policies and procedures governing sales and promotional activities, and compliance monitoring programs, including field sampling of interactions with physicians and rigorous reporting procedures and controls. Mr. Smith spearheaded the litigation and settlements in shareholder derivative actions brought on behalf of biotechnology companies, MannKind Corporation, *In re MannKind Corp. Derivative Litigation*, No. 1:11-cv-05003-GAF-SSx (C.D. Ca. June 13, 2011), and CTI BioPharma (f.k.a. Cell Therapeutics), *In re Cell Therapeutics, Inc., Derivative Litigation*, No. 2:10-cv-00564-MJP (W.D. Wash.-Seattle Apr. 1, 2010), that led to their adoption of state-of-the-art clinical trial and disclosure oversight and internal controls programs, following costly mismanagement of clinical trials and publication of misleading disclosures.

Mr. Smith played a leading role in securing best-in-class corporate governance for Motorola, Inc. in shareholder derivative litigation arising from Motorola's publication of misleading statements about prospects for its next-generation cell phones and related revenue projections. *In re Motorola, Inc. Derivative Litigation*, No. 07-CH-23297 (Ill. Cir. Ct.-Cook Cty. Nov. 29, 2012). Mr. Smith was instrumental in drafting and negotiating a comprehensive overhaul of board- and executive-level supervision of financial disclosures, as well as broader corporate governance reforms designed to align director and executive compensation with long-term shareholder interests and to eliminate incentives for executives to manipulate results or withhold negative information from shareholders. As lead counsel in *Monday v. Meyer*, No. 1:10-cv-01838-DCN (N.D. Ohio Aug. 17, 2012), Mr. Smith challenged the KeyCorp Board of Director's handling of an unlawful tax avoidance scheme, which exposed the bank to billions of dollars in back taxes and fines by the IRS. While the case was on appeal, Mr. Smith negotiated corporate governance reforms that strengthened KeyCorp's internal controls and Board oversight over financial transactions and legal/regulatory risk, capital planning, dividends, and stock repurchases. Mr. Smith played a key role in persuading Brocade Communication Systems, Inc.'s Board Special Litigation Committee to prosecute stock option backdating claims against former officers and directors of Brocade. *In re Brocade Communication Systems, Inc., Derivative Litigation*, No. 1:05-cv-041683 (Cal. Super. Ct.-Santa Clara Cty. Jan. 28, 2010). As part of a four-lawyer team, Mr. Smith convinced the Committee to retain the firm as co-counsel to pursue the claims. Brocade recovered tens of millions of dollars

and extinguished its obligation to fund the criminal defense of its former CEO.

Mr. Smith was recognized by his peers as a *San Diego Super Lawyer* for four consecutive years (2015–2018).

Before joining Robbins Arroyo LLP, Mr. Smith served for four years as division and regional counsel for UBS Financial Services, Inc., a global financial services company, where he advised management regarding litigation, regulatory, and employment matters arising in the company's Northern Pacific region. Mr. Smith spent the first decade of his career at O'Melveny & Myers LLP, where he defended Fortune 500 companies and professional services firms in securities fraud class actions, shareholder derivative litigation, SEC investigations and enforcement actions, and professional malpractice and business tort matters. Mr. Smith served for five years on O'Melveny & Myers' firm-wide Pro Bono Committee.

Mr. Smith earned his Juris Doctor in 1992 from Yale Law School. At Yale, he externed for the U.S. Attorney's Office in New Haven, Connecticut. Mr. Smith graduated with highest honors in Political Science and highest distinction in Letters and Science from the University of California, Berkeley in 1988, and was initiated into Phi Beta Kappa as a junior. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, as well as the U.S. Courts of Appeals for the First, Sixth, and Ninth Circuits.

OF COUNSEL

Nichole T. Browning
Of Counsel

Ms. Browning has spent her career representing clients in a range of complex litigation matters, including corporate merger and acquisition class actions, shareholder derivative actions, securities fraud class actions, consumer class actions, and antitrust litigation. She has handled all aspects of case management from inception through trial and appeals. Ms. Browning also assists the firm's cases through the settlement process.

Working closely with partner Stephen Oddo, Ms. Browning achieved a $19.5 million settlement on behalf of former Saba Software shareholders in *In re Saba Software, Inc. Stockholder Litig*. C.A. No. 10698-VCN, a class action alleging the company had engaged in a flawed and self-serving sales process in exchange for inadequate merger consideration for Saba Software shareholders. In approving the settlement the court acknowledged it was a "strong recovery for the class." Prior to joining the firm, Ms. Browning was a senior associate at the San Francisco office of Barroway Topaz Kessler Meltzer & Check, LLP, where she represented shareholders throughout the U.S. in complex litigation involving securities fraud class actions and shareholder derivative actions. For example, Ms. Browning acted as co-lead counsel in *In re Atmel Corp. Derivative Litigation*, No. 5:06-cv-4592-JF (N.D. Cal. Aug. 13, 2010), a shareholder derivative action involving stock option backdating. The case ultimately secured $9.65 million for the company and the implementation of significant corporate governance reforms, including a strengthened process for granting and documenting the issuance of employee stock option awards and enhanced independence of the board of directors. Ms. Browning also played an instrumental role in *In re Apple Computer, Inc. Derivative Litigation*, No. C-06-04128 (N.D. Cal. Nov. 10, 2008), a shareholder derivative action involving stock option backdating. Ms. Browning helped prosecute plaintiffs' claims and supported team efforts that recovered $14 million and prompted Apple to implement cutting edge corporate governance practices. Earlier in her career, Ms. Browning worked for preeminent Atlanta-based firms prosecuting and defending complex litigation, including securities fraud and antitrust class actions.

Ms. Browning has authored publications including *Reducing FCPA Exposure,* The Recorder, June 25, 2012, together with Kevin A. Seely and Gina Stassi; *Understanding the Shareholder Bill of Rights*, Law360, Nov. 10, 2009; and *Private Securities Litigation Reform Act of 1995 (PSLRA) Update*, Institute of Legal Education of Georgia, Nov. 2000, together with Martin D. Chitwood.

Ms. Browning received her Juris Doctor in 1997 from American University, Washington College of Law. While in law school, Ms. Browning studied at Emory University School of Law in Atlanta, Georgia, and the

Universidad Diego Portales in Santiago, Chile. She graduated from Emory University in 1994 with a Bachelor of Arts in Psychology. Ms. Browning is licensed to practice law in the State of California and the State of Georgia, and has been admitted to the U.S. District Courts for the Northern and Central Districts of California and the Northern District of Georgia, as well as the U.S. Courts of Appeals for the Second and Ninth Circuits.

Shane P. Sanders
Of Counsel

Mr. Sanders represents individual and institutional investors in shareholder derivative actions, securities fraud class actions, and mergers and acquisitions actions. He has helped prosecute shareholder litigation that recouped millions of dollars from fraudulent corporate officers and secured the implementation of extensive corporate governance reforms at public corporations. In so doing, Mr. Sanders has successfully opposed numerous dispositive motions, including motions based on demand futility.

Mr. Sanders helped litigate shareholder derivative litigation on behalf of Fifth Street Finance Corp., *In re Fifth Street Finance Corp. Shareholder Derivative Litigation*, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016), based on allegations that the company's officers and directors caused Fifth Street to pursue reckless asset growth strategies, employ aggressive accounting and financial reporting practices, and pay excessive fees to its investment advisor to inflate the investment advisor's perceived value in advance of its initial public offering. Mr. Sanders was instrumental in the discovery efforts and settlement negotiations and mediations, and helped secure an outstanding settlement for Fifth Street and its stockholders, including advisory fee reductions worth at least $30 million to Fifth Street, and comprehensive corporate governance, oversight, and conflicts management enhancements to substantially improve the compliance control environment at Fifth Street and reduce the likelihood of a recurrence of similar wrongdoing in the future. Mr. Sanders was the lead associate in *In re Koss Corporation Shareholder Derivative Litigation*, No. 10-CV-2422 (Wis. Cir. Ct.-Milwaukee Cnty. Sept. 22, 2011), a shareholder derivative action that involved the theft of tens of millions of dollars from the company by one of its executive officers. In that case, Mr. Sanders and his fellow counsel defeated defendants' motion to dismiss based on demand futility and negotiated a settlement that provided for the implementation of extensive corporate governance changes, including the separation of the positions of chairman of the board of directors, chief executive officer, and chief financial officer; the appointment of a lead independent director; enhanced accounting and audit functions; and the implementation of a plan requiring the reimbursement of excess incentive-based compensation in the event of a financial restatement. In *In re Fossil, Inc. Derivative Litigation*, No. 3:06-cv-01672-F (N.D. Tex. July 6, 2011), Mr. Sanders supported a team in multi-year derivative litigation that achieved a settlement securing $8.6 million payment for Fossil from individual defendants and industry leading corporate governance reform, such as declassifying the election of directors to the board. Mr. Sanders was the lead associate in *Paschetto v. Shaich*, No. 08-SL-CC00805 (Mo. Cir. Ct.-St. Louis Cnty. April 8, 2011), a shareholder derivative action on behalf of Panera Bread Company in which Mr. Sanders helped the firm defeat defendants' motion to dismiss based on demand futility and negotiate a settlement that provided substantial benefits to the company and its shareholders. In *In re Vitesse Semiconductor Corporation*, No. Civ240483 (Cal. Sup. Ct.-Ventura Cnty. Oct. 17, 2008), Mr. Sanders was part of a team that achieved the return of more than $13 million from company insiders and valuable corporate governance improvements. In *In re Ligand Pharmaceuticals, Inc. Derivative Litigation*, No. GIC834255 (Cal. Super. Ct.-San Diego Cnty. Oct. 12, 2006), Mr. Sanders supported a team that persuaded the court that demand on the board of directors was futile and subsequently defeated all of defendants' other motions, and helped obtain a $14 million payment to the corporation and significant corporate governance improvements for the company.

For his achievements, Mr. Sanders was recognized by his peers as a Super Lawyer Rising Star (2015).

Mr. Sanders received his Juris Doctor degree in 2004 from the University of San Diego School of Law. While in law school, Mr. Sanders served as a law clerk at the San Diego County Public Defender's Office, and he was a member of the Association of Trial Lawyers of America and USD's Sports and Entertainment Law Society. He also participated in USD's Thorsnes Closing Argument Competition and Senior Honors Moot Court Competition, receiving among the highest marks for his written briefs. Mr. Sanders graduated from the University of California, Santa Barbara in 2001 with a Bachelor of Arts degree in Sociology. He is licensed to

practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California and the District of Colorado, as well as the U.S. Courts of Appeals for the First, Second, and Ninth Circuits.

Marc M. Umeda
Of Counsel

Mr. Umeda co-founded the law firm and has practiced complex litigation throughout his legal career. He has successfully prosecuted shareholder derivative and securities class actions across the country on behalf of his shareholder clients, achieving multi-million dollar monetary recoveries, including one of the largest monetary settlements ever in a shareholder derivative action, and securing corporate governance improvements at some of the country's most well-known companies.

Mr. Umeda has served as lead counsel on numerous cases that obtained significant results for shareholders and corporations, such as *Staehr v. Walter*, No. 02-CVG-11-0639 (Ohio Ct. C.P.-Del. Cnty. Dec. 17, 2007) ($70 million for Cardinal Health), *In re Nicor, Inc. S'holder Derivative Litig.*, No. 02 CH 15499 (Ill. Cir. Ct.-Cook Cnty. Mar. 29, 2005) ($33 million for the company and personnel changes against the company's executive officers and board of directors), and *In re Sanmina-SCI Corporation Shareholder Derivative Litigation*, No. 1:06-CV-071786 (Cal. Super. Ct.-Santa Clara May 15, 2009) (nearly $16.8 million to the company from the defendants and numerous corporate governance reforms, including stricter stock option plan policies). In *In re Brocade Communications Systems, Inc. Derivative Litigation*, No. 1:05-cv-041683 (Cal. Super. Ct.-Santa Clara Cnty. Jan. 28, 2010), Mr. Umeda served as lead counsel in shareholder derivative litigation arising out of a multi-year criminal stock option backdating scheme and led the firm in preventing an inadequate settlement that would have released defendants for no money to the company, even as the U.S. government pursued and ultimately obtained criminal convictions against the responsible executives. The firm was eventually retained by the company to assist in prosecuting its claims against certain former officers and directors.

Mr. Umeda has been named a Super Lawyer every year since 2009, and his leadership and dedication to shareholder causes has also drawn recognition from judges, such the Honorable Mark R. Forcum of the Superior Court of California, County of San Mateo, who has observed that Mr. Umeda is "an excellent lawyer" who is committed "to do the best possible job he can for [his client]."

Mr. Umeda earned his Juris Doctor in 1998 from the University of San Diego School of Law, where he was a member of the *San Diego Law Review*. Mr. Umeda graduated from the University of California, Berkeley in 1994 with a Bachelor of Arts in Political Science. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California and the District of Colorado, as well as the U.S. Courts of Appeals for the Second, Third, Fourth, Seventh, and Ninth Circuits.

ASSOCIATES

Jonathan D. Bobak
Associate

Jonathan Bobak is a member of the new matters practice group, where he focuses on researching and evaluating potential new cases and legal theories for liability and recovery, drafting complaints for clients, and identifying new business opportunities.

Before joining Robbins Arroyo LLP, Mr. Bobak worked as a law clerk for a boutique San Diego law firm. Prior to entering law school, Mr. Bobak was a Lieutenant in the U.S. Navy, last serving as Training Officer aboard the guided-missile destroyer USS Milius, where he supervised and coordinated all training programs and events for a crew of over 240 personnel.

Mr. Bobak received his Juris Doctor degree from the University of San Diego School of Law, where he completed a concentration in business and corporate law. While in law school, Mr. Bobak served as comments

editor of the *San Diego International Law Journal*, and as a judicial extern for the Honorable Mitchell D. Dembin of the U.S. District Court for the Southern District of California and the Honorable Alan G. Lance, Sr. of the U.S. Court of Appeals for Veterans Claims. Mr. Bobak graduated from Miami University with a Bachelor of Arts degree in International Studies and German.

Eric M. Carrino
Associate

Eric M. Carrino focuses his practice on representing individual and institutional shareholders in complex securities litigation addressing unfair mergers and acquisitions, securities fraud, and excessive fees charged by mutual fund advisors.

First joining the firm in 2011, Mr. Carrino worked as a client relations specialist before attending law school. In that role, he developed a passion for protecting the rights and interests of shareholders by working closely with the firm's clients and supporting the firm's Stock Watch program.

Mr. Carrino is a member of the Association of Business Trial Lawyers, the Honorable William B. Enright American Inn of Court, and the Public Justice Foundation.

Mr. Carrino holds a Juris Doctor degree from the University of San Diego School of Law with a concentration in corporate and securities law. He graduated *cum laude* and was the recipient of the Law Faculty Honor Scholarship, the Faculty Outstanding Scholar Award, and the CALI Award for Corporate Deals, among others. While in law school, he was a member of the *San Diego Law Review* and clerked for a Los Angeles-based aviation and aerospace law firm, as well as for Robbins Arroyo LLP. Mr. Carrino graduated *cum laude* from the University of California, Los Angeles with a Bachelor of Science degree in Political Science. He is licensed to practice in the State of California, and has been admitted to the Southern District of California and Eastern District of Wisconsin.

Leonid Kandinov
Associate

Leonid Kandinov represents individual and institutional investors and consumers in complex litigation. His practice areas include shareholder rights, securities fraud, consumer protection, and antitrust matters.

Mr. Kandinov currently serves the firm primarily in a business development capacity. Combining his depth of knowledge and passion for shareholder rights law with his approachable demeanor, Mr. Kandinov is the first point of contact for the firm's clients, educating clients about the litigation process and evaluating potential new cases. Prior to this role, Mr. Kandinov served for two years on one of the firm's litigation teams and three years in its new matters group, where he researched and evaluated factual and legal theories for liability and recovery and drafted complaints for clients. For his efforts, Mr. Kandinov has been recognized as a Super Lawyer Rising Star (2016-2018).

Mr. Kandinov earned his Juris Doctor degree from the University of California at Davis School of Law, where he completed the Public Service Law Program. He received the Witkin Award for Academic Excellence in Accounting for Lawyers and was an associate editor for the *Business Law Journal*. He also served as a judicial extern for the Honorable Ronald H. Sargis at the U.S. Bankruptcy Court in the Eastern District of California and as a law clerk for the U.S. Attorney's Office, Southern District of California. Mr. Kandinov was also a summer associate and investigative analyst at Robbins Arroyo LLP. Mr. Kandinov graduated summa cum laude with a Bachelor of Arts in Political Science from San Diego State University and was Valedictorian of his class. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, and the U.S. Court of Appeals for the Ninth Circuit. Mr. Kandinov is fluent in Russian.

Steven M. McKany
Associate

Steven M. McKany dedicates his practice to representing plaintiffs in complex litigation, including shareholder derivative actions, consumer class actions, and antitrust litigation. Prior to joining Robbins Arroyo LLP, Mr. McKany was an associate at a boutique firm where he represented clients in a variety of matters, including complex construction defect, personal injury, and medical malpractice. Mr. McKany also worked for a law firm specializing in complex class and private actions related to shareholder derivative and securities litigation.

Mr. McKany earned his Juris Doctor degree from Saint Louis University School of Law, where he graduated *cum laude*. During law school, Mr. McKany served as a legal intern for the Missouri State Public Defender and San Diego Public Defender's Office. Mr. McKany earned his Bachelor of Arts degree from San Diego State University. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, Southern, and Eastern Districts of California, and the District of Colorado.

Steven R. Wedeking
Associate

Steven Wedeking has spent most of his legal career representing the interests of plaintiff clients, and currently concentrates his practice on shareholder rights litigation.

Mr. Wedeking first joined Robbins Arroyo LLP in 2005 as a law school graduate. Mr. Wedeking then decided to strike out on his own and spent 12 years representing plaintiffs in personal injury and eviction matters. Mr. Wedeking has substantial litigation experience, handling cases from inception through trial. He has conducted arbitrations, mediations, and settlement negotiations.

Mr. Wedeking earned his Juris Doctor degree at the University of San Diego School of Law. While in law school, Mr. Wedeking served on the San Diego Law Review, won Best Team in the 2004 ATLA Intramural Mock Trial Competition, and clerked for the Office of General Counsel of the Department of the Navy. Upon graduation, Mr. Wedeking was presented with the 2004 International Academy of Trial Lawyers Award for Excellence in Advocacy and Procedure. Mr. Wedeking received his Bachelor of Arts degree from the University of Texas. He is licensed to practice in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California.

Exhibit 2

CORNERSTONE RESEARCH
Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2017 Review and Analysis

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The views expressed in this report are solely those of the authors, who are responsible for the content, and do not necessarily represent the views of Cornerstone Research.

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Analyses in this report are based on 1,697 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2017. See page 17 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

Highlights

While the number of settlements in 2017 remained at relatively high levels, total settlement dollars dipped dramatically to $1.5 billion from $6.1 bilion in 2016. This decline can be attributed to a large percentage of settlements under $5 million combined with the absence of any settlements over $250 million.

- There were 81 securities class action settlements approved in 2017, a slight decrease from the number of cases settled in 2016 but the second-highest level since 2010. (page 3)
- The total value of settlements approved by courts in 2017 was $1.5 billion, the second-lowest level in the past 10 years. (page 3)
- There were four mega settlements—settlements of $100 million or more—in 2017 (compared to 10 in 2016), accounting for 43 percent of total settlement dollars (compared to 81 percent in 2016). (page 4)
- The median settlement amount in 2017 was $5.0 million, over 40 percent lower than both the 2016 median ($8.7 million) and the median for all prior post–Reform Act settlements ($8.5 million). (page 5)
- The average settlement amount in 2017 also declined, to $18.2 million. This was 75 percent lower than in 2016 and nearly 70 percent lower than the average for all prior post–Reform Act settlements. (page 5)
- For the first time in more than five years, there were no settlements exceeding $250 million. (page 5)
- Settlements in 2017 involved smaller cases compared to previous years. In particular, median and average "simplified tiered damages" in 2017 were the lowest over the last 10 years. (page 7)
- For 2017 cases with Rule 10b-5 claims, the average settlement amount as a percentage of "simplified tiered damages" was the highest in the last five years, driven by a sharply higher percentage for smaller cases. (page 8)
- Cases with companion derivative actions typically settle for higher amounts. In 2017, however, the median settlement for cases with companion derivative actions was lower than for cases without accompanying derivative actions. (page 13)
- Higher percentages of cases settling within two years of the filing date continued in 2017, reaching over 23 percent of all settlements. (page 15)

Figure 1: Settlement Statistics
(Dollars in Millions)

	1996–2016	2016	2017
Number of Settlements	1,616	85	81
Total Amount	$93,193.2	$6,118.0	$1,473.6
Minimum	$0.1	$0.9	$0.5
Median	$8.5	$8.7	$5.0
Average	$57.7	$72.0	$18.2
Maximum	$8,794.7	$1,608.6	$210.0

Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Author Commentary

As projected in our 2016 report, the relatively high volume of settlements continued in 2017 but the number of very large settlements declined, contributing to the substantial drop in the size of settlements overall.

2017 Findings

The decline in settlement sizes can largely be attributed to the smaller size of these cases, reflected in the lower estimates of our proxy for plaintiff-style damages. A combination of low stock market volatility in the years in which the cases were filed, as well as substantially shorter class periods, contributed to the reduction in the damages proxy for cases settled in 2017. In addition, 2017 settlements were associated with considerably smaller issuer defendants.

The decline in case size leads to other trends. For example, consistent with what we would expect for smaller cases, the time from case filing to settlement was shorter in 2017.

However, not all developments in 2017 were driven by case size. For example, institutional investors appeared less frequently as lead plaintiffs, even in large cases. Recent literature has discussed the lack of economic incentives for institutions to serve as lead plaintiffs, other than the potential benefit to public pension plans from political contributions by plaintiff attorneys, and has called for reform to improve the lead plaintiff selection process.[1]

In addition, the proportion of settled securities class actions accompanied by corresponding derivative actions was among the highest we have observed in more than 15 years. Nearly half of all cases—and more than half of all settlements for $5 million or less—involved an accompanying derivative action.

These results are unexpected since, historically, accompanying derivative actions have been associated with larger class actions and larger settlement amounts. Moreover, they are interesting in light of arguments considering whether derivative litigation is an effective mechanism to monitor corporate governance and whether eliminating derivative litigation altogether may be a viable option.[2]

"Simplified Tiered Damages"

In this report we focus on a "simplified tiered damages" proxy for estimating plaintiff-style damages in cases with Rule 10b-5 claims (see page 6). This replaces the measure traditionally used in settlement research. We view this proxy as an enhancement to settlement research, as this estimate of per-share inflation is conceptually more closely aligned with the typical plaintiff approach. This measure is more fully described in *Estimating Damages in Settlement Outcome Modeling*.

What stands out in 2017 is the drop in mid-range to large settlements, due largely to a reduction in the proxy for damages, as well as the size of the issuer defendant firms involved.

Dr. Laura E. Simmons
Senior Advisor
Cornerstone Research

Looking Ahead

Recent data on case filings can provide insights into potential settlement trends. See Cornerstone Research's *Securities Class Action Filings—2017 Year in Review*.

The record numbers of cases filed in the previous two years might suggest that the high volume of settlements will continue. However, these data also show higher rates of dismissals, which could offset the increase in filings in terms of settlement activity.

The latest data also suggest that smaller firms have become more common targets of securities class actions, but there is no evidence that indicates the unusually low levels of "simplified tiered damages" observed in 2017 will necessarily continue in upcoming years.

On the other hand, recent filings data support the potential continuation of a reduced level of institutional investors serving as lead plaintiffs, whose presence is typically associated with higher settlement amounts. In addition, we expect the rate of settlements for issuers in healthcare and related industry sectors, such as biotech and pharmaceuticals, to persist given the prevalence of these industries among newly filed cases.

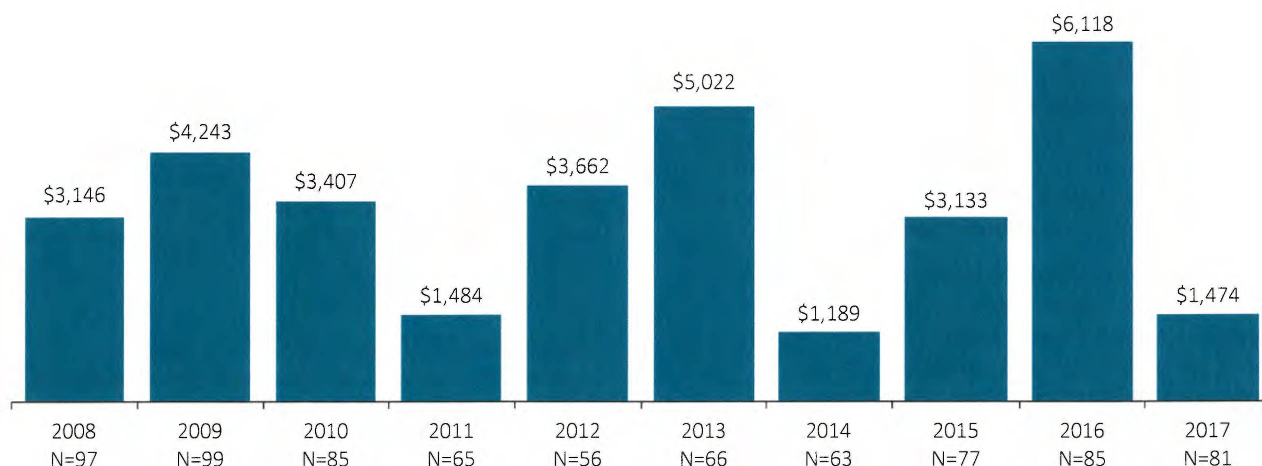
—*Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons*

Total Settlement Dollars

- The total value of settlements approved by courts in 2017 declined substantially to $1.5 billion, less than a quarter of the total amount approved in 2016.
- The median settlement in 2017 was $5.0 million, over 40 percent lower than in 2016.
- While there were only four fewer cases settled in 2017 compared to 2016, the absence of very large settlements (exceeding $250 million) and the decline in the median settlement amount contributed to the decline in 2017 total settlement dollars.
- The decline in the median settlement amount was primarily driven by a reduction in "simplified tiered damages" for cases settled in 2017. (See page 6 for a discussion of this measure.)

The total value of settlements was the second lowest in the last 10 years.

Figure 2: Total Settlement Dollars
2008–2017
(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

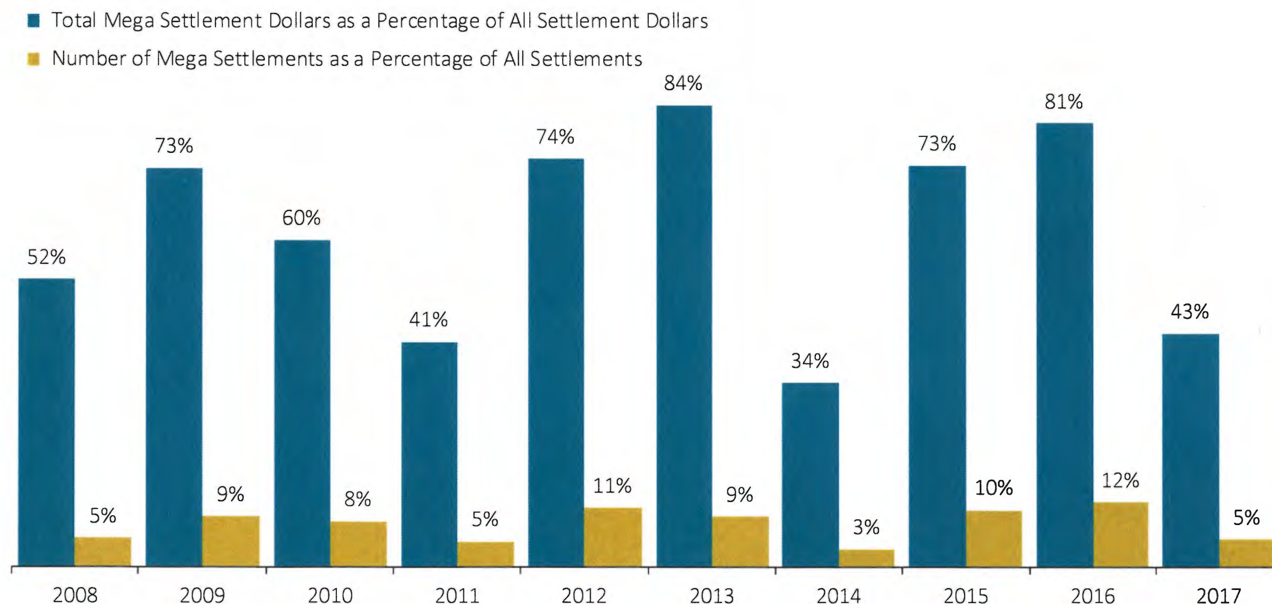
Mega Settlements

- There were four mega settlements (settlements equal to or greater than $100 million) in 2017, with the largest settlement amounting to $210 million.
- Total mega settlement dollars in 2017 were $630 million compared to $5 billion (adjusted for inflation) in 2016.
- Mega settlements have accounted for 70 percent of all settlement dollars from 2008 through 2016, but this percentage varies substantially from year to year.

The total value of mega settlements in 2017 was nearly 90 percent lower than in 2016.

- While mega settlements typically comprise the majority of the total value of settled cases, only 43 percent of 2017 settlement dollars came from mega settlements.

Figure 3: Mega Settlements
2008–2017



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

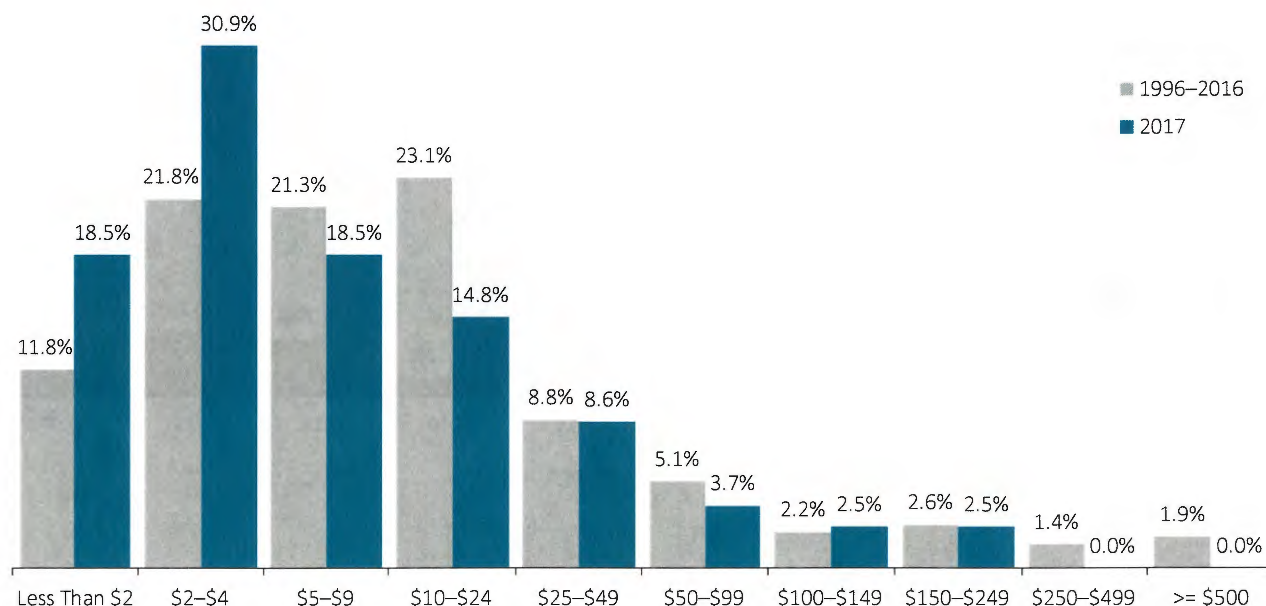
Settlement Size

- In 2017, both the number and proportion of settlements less than or equal to $5 million were the highest in the last 10 years.
- Fifteen cases settled for $2 million or less (historically referred to as "nuisance suits") in 2017.
- As reported in Cornerstone Research's *Securities Class Action Filings—2017 Year in Review,* three plaintiff law firms (The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray) have increasingly been appointed as counsel in smaller-than-average cases.[3] In 60 percent of cases settling for $2 million or less, the lead or co-lead plaintiff counsel included at least one of these plaintiff law firms.
- The respective median and average settlement amounts in 2017 were approximately 40 percent and 70 percent lower than the median and average for all prior post–Reform Act settlements.
- Of the cases settled in 2017, 33 percent were between $5 million and $25 million, compared to 42 percent among all prior post–Reform Act settlements, indicating a decline in mid-range settlements.

In 2017, 51 percent of settlements were for $5 million or less.

Figure 4: Distribution of Post–Reform Act Settlements 1996–2017

(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Damages Estimates

Rule 10b-5 Claims: "Simplified Tiered Damages"

A key factor in a meaningful analysis of settlement outcomes is a proxy for damages claimed by plaintiffs. *Estimating Damages in Settlement Outcome Modeling* introduced a new method for estimating that proxy that is conceptually more closely aligned with the approach typically followed by plaintiffs in current securities class action litigation matters.[4] This report concentrates on analysis of "simplified tiered damages" instead of the simplified "estimated damages" proxy used in previous reports.

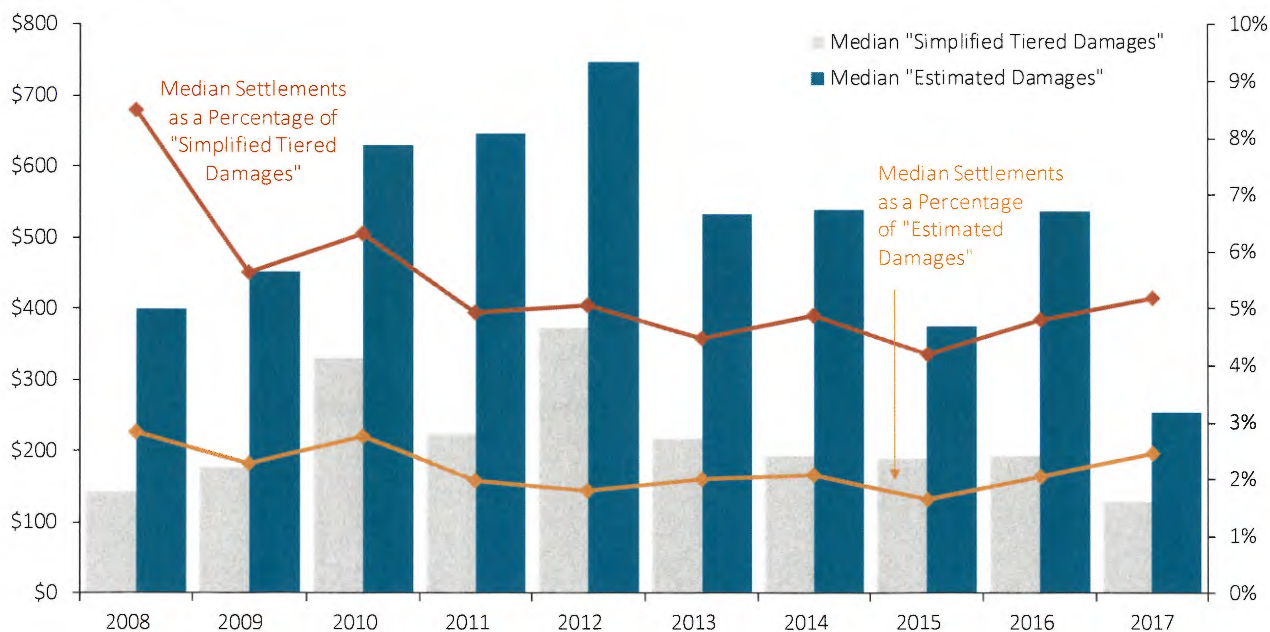
Like "estimated damages," "simplified tiered damages" is highly correlated with settlement amounts and has comparable explanatory power in regression analyses of settlement amount determinants.

"Simplified tiered damages" bases per-share inflation estimates on the dollar value of a defendant's stock price movements on the specific dates detailed in the plan of allocation in the settlement notice. When there is a single alleged corrective disclosure date, the measure is calculated using a constant dollar value line that reflects the price change at the end of the class period. When there are multiple dates identified in the settlement notice, the measure is calculated using a tiered dollar value line that reflects the cumulative price changes associated with those dates.[5,6]

Generally, "simplified tiered damages" is smaller than the corresponding "estimated damages" upon which our historical reports have concentrated, due to differences in the methods used to estimate per-share inflation.[7] As a result, settlements as a percentage of "simplified tiered damages" is larger than settlements as a percentage of "estimated damages."

Figure 5: "Simplified Tiered Damages" and "Estimated Damages"
2008–2017

(Dollars in Millions)



Note: Damages figures are adjusted for inflation based on class period end dates. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

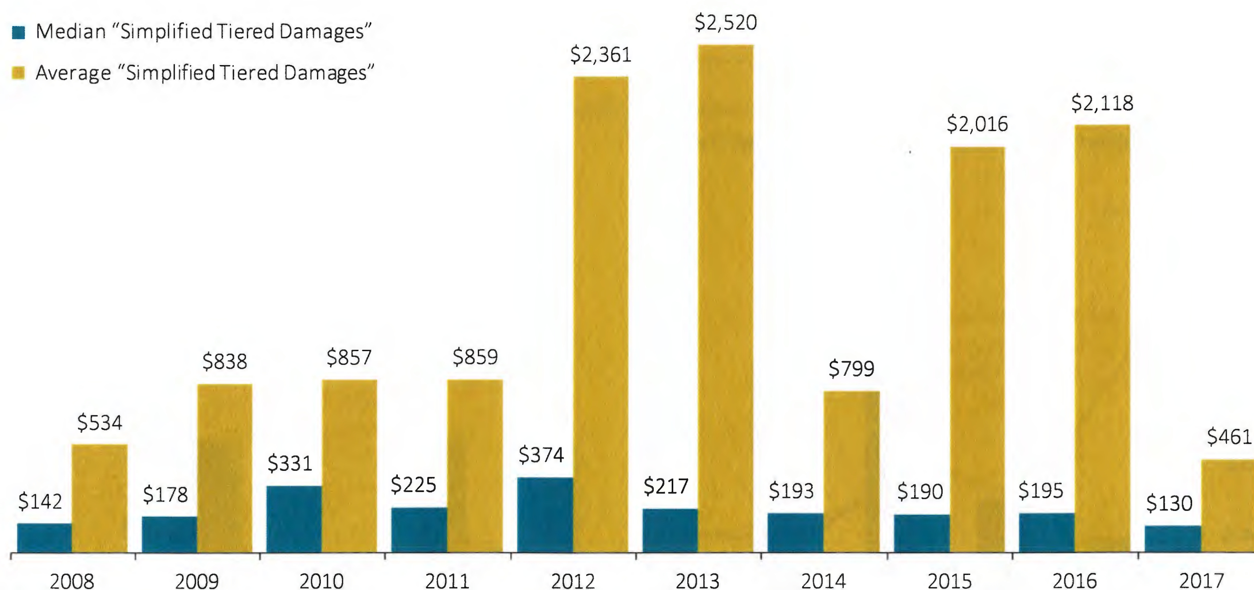
"Simplified tiered damages" uses simplifying assumptions to estimate per-share damages and trading behavior. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends. Our prediction models find this measure to be the most important factor in predicting settlement amounts. However, it is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

Median and average "simplified tiered damages" were at a 10-year low.

- "Simplified tiered damages" is correlated with stock market volatility at the time of a case filing. The decline in median and average "simplified tiered damages" in 2017 is consistent with low stock market volatility in 2014 and 2015, when the majority of cases settled in 2017 were filed.
- Simplified tiered damages" is also correlated with the length of the class period. In 2017, the median class period for settled cases was 32 percent lower than the median in 2016.
- Higher "simplified tiered damages" are generally associated with larger issuer defendants (measured by total assets or market capitalization of the issuer). In 2017, the median issuer defendant total assets of $547 million was 37 percent smaller than for cases settled over the prior nine years.

Figure 6: Median and Average "Simplified Tiered Damages" 2008–2017

(Dollars in Millions)



Note: "Simplified tiered damages" are adjusted for inflation based on class period end dates. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

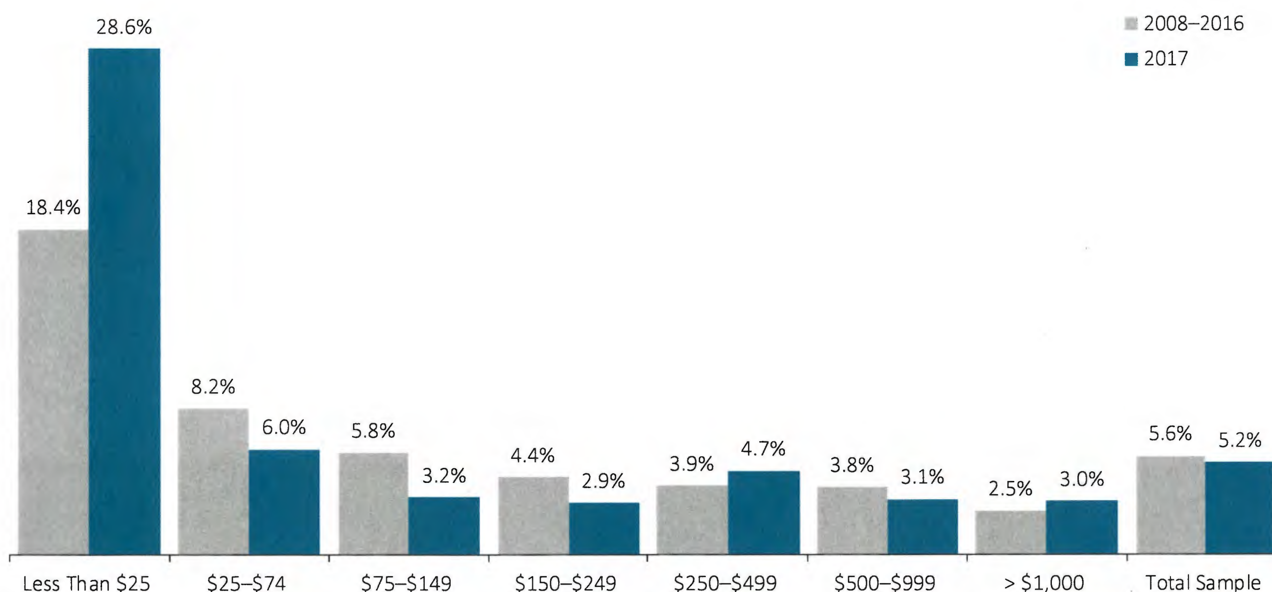
- Larger cases typically settle for a smaller percentage of "simplified tiered damages."
- The median settlement as a percentage of "simplified tiered damages" increased for the second consecutive year, reaching 5.2 percent in 2017—a level in line with the 10-year median.
- For the smallest cases, the median settlement as a percentage of "simplified tiered damages" in 2017 increased by more than 120 percent compared to the prior year.

The average settlement as a percentage of "simplified tiered damages" was the highest in the last five years due, in part, to a spike in small cases.

- As observed over the last decade, smaller cases settle more quickly. Cases with less than $25 million in "simplified tiered damages" settled within 2.4 years on average, compared to more than 3.8 years for cases with "simplified tiered damages" of greater than $25 million.

Figure 7: Median Settlements as a Percentage of "Simplified Tiered Damages" by Damages Ranges 2008–2017

(Dollars in Millions)



Note: "Simplified tiered damages" are adjusted for inflation based on class period end dates. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

'33 Act Claims: "Simplified Statutory Damages"

- For cases involving Section 11 and/or Section 12(a)(2) claims ('33 Act claims) only, shareholder losses are estimated using a model where alleged inflation per share is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages."[8] Only the offered shares are assumed to be eligible for damages.
- "Simplified statutory damages" is typically smaller than "simplified tiered damages," reflecting differences in the methodology used to estimate alleged inflation per share, as well as differences in the shares eligible to be damaged (i.e., only offered shares are included).
- In the last decade, cases involving combined claims (Rule 10b-5 and Section 11 and/or Section 12(a)(2) claims) had, on average, nearly 50 percent more docket entries than cases involving only Rule 10b-5 claims—indicating the more complex nature of these matters.
- Among cases settled in 2017, 75 percent of those involving only Section 11 and/or Section 12(a)(2) claims settled within three years from the filing date, while only 53 percent of cases involving Rule 10b-5 claims settled as quickly.

Median settlement amounts are substantially higher for cases involving '33 Act claims and Rule 10b-5 allegations than for those with only Rule 10b-5 claims.

Figure 8: Settlements by Nature of Claims
2008–2017
(Dollars in Millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	70	$4.5	$83.3	7.5%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	135	$12.8	$315.5	5.8%
Rule 10b-5 Only	552	$7.8	$188.3	5.0%

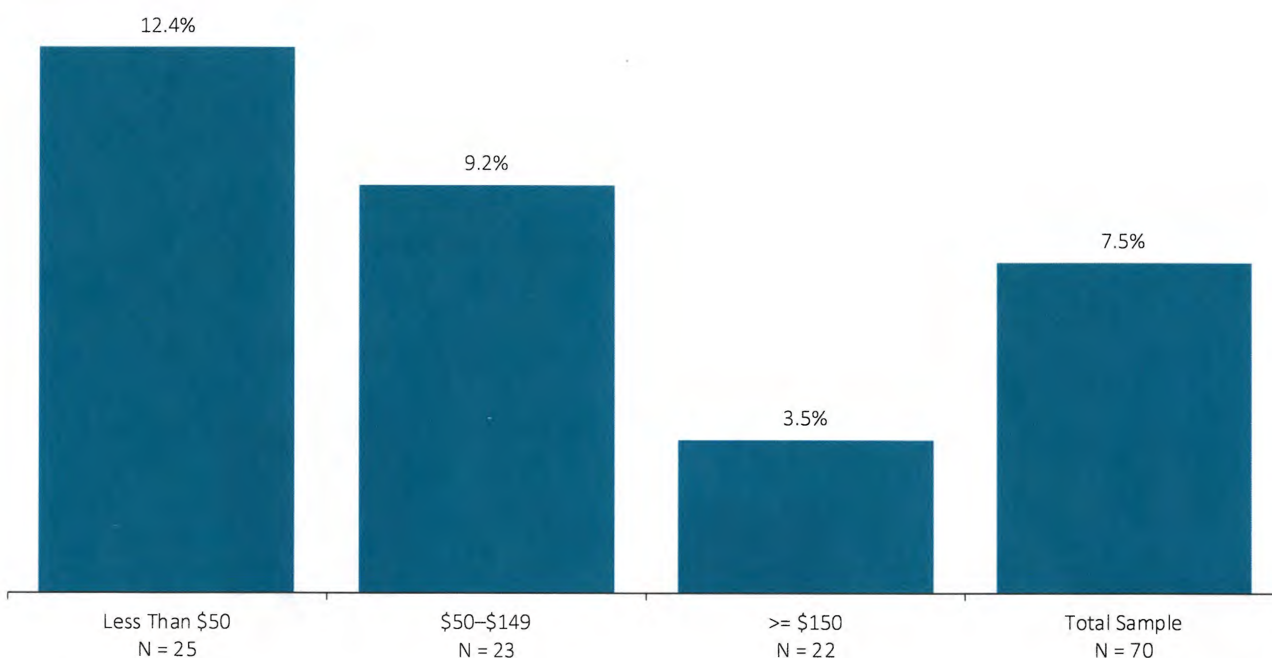
Note: Settlement dollars and damages are adjusted for inflation; 2017 dollar equivalent figures are used. Damages are adjusted for inflation based on class period end dates.

- Similar to cases with Rule 10b-5 claims, settlements as a percentage of "simplified statutory damages" for cases with only '33 Act claims are smaller for cases that have larger damages.
- Over the period 2008–2017, the average settlement as a percentage of "simplified statutory damages" with a named underwriter defendant was 12.8 percent, compared to 7.4 percent without a named underwriter defendant.

Since 2008, 84 percent of settled cases with only '33 Act claims had a named underwriter defendant.

Figure 9: Median Settlements as a Percentage of "Simplified Statutory Damages" by Damages Ranges 2008-2017

(Dollars in Millions)



Note: "Simplified statutory damages" are adjusted for inflation based on class period end dates; 2017 dollar equivalent figures are used.

Analysis of Settlement Characteristics

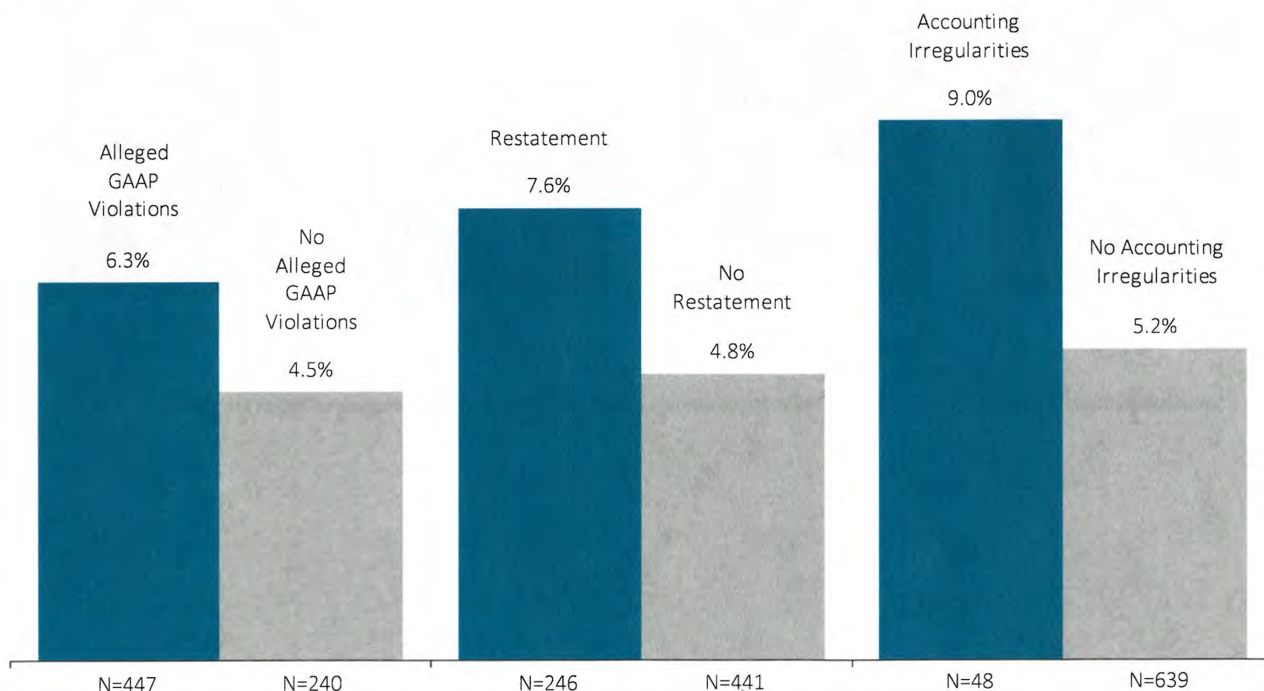
Accounting Allegations

This analysis examines three types of accounting issues among settled cases involving Rule 10b-5 claims: (1) alleged GAAP violations, (2) restatements, and (3) reported accounting irregularities.[9] For further details regarding settlements of accounting cases, see Cornerstone Research's annual report on *Accounting Class Action Filings and Settlements*.

- The proportion of settled cases alleging GAAP violations in 2017 was 53 percent, continuing a three-year decline from a high of 67 percent in 2014.
- Settled cases with restatements are generally associated with higher settlements as a percentage of "simplified tiered damages" compared to cases without restatements.
- Of cases settled in the prior nine years with accounting-related allegations, 23 percent involved a named auditor codefendant. In 2017, this dropped to 13 percent.

The infrequency of reported accounting irregularities among settled cases continued for the third straight year.

Figure 10: Median Settlements as a Percentage of "Simplified Tiered Damages" and Accounting Allegations 2008–2017



Institutional Investors

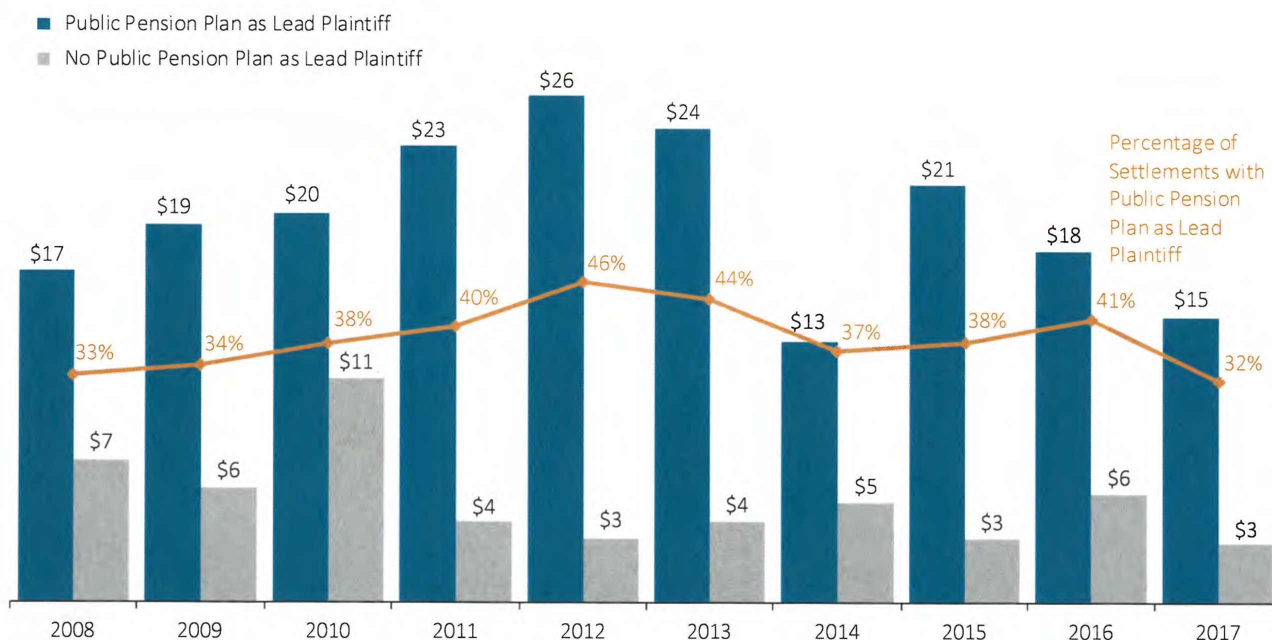
- Institutions, including public pension plans (a subset of institutional investors) tend to be involved in cases with higher "simplified tiered damages."
- The decline in public pension plan involvement in 2017 settlements in part reflects the smaller cases involved. However, even within larger cases (e.g., cases with "simplified tiered damages" greater than $50 million), public pension plans were less frequently involved in 2017 than in prior years.
- In 2017, 39 percent of settlements with "simplified tiered damages" greater than $50 million involved a public pension plan as lead plaintiff, compared to 48.6 percent for 2008–2016.

The proportion of settlements with a public pension plan as lead plaintiff declined to the lowest level over the past 10 years.

- Cases in which public pension plans serve as lead or co-lead plaintiff are typically associated with larger issuer defendants, longer class periods, securities in addition to common stock, accounting allegations, and other indicators of more serious cases, such as criminal charges. These cases are also associated with longer intervals from filing to settlement. (See page 15 for additional details regarding length of time from filing to settlement.)

Figure 11: Median Settlement Amounts and Public Pension Plans 2008–2017

(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Derivative Actions

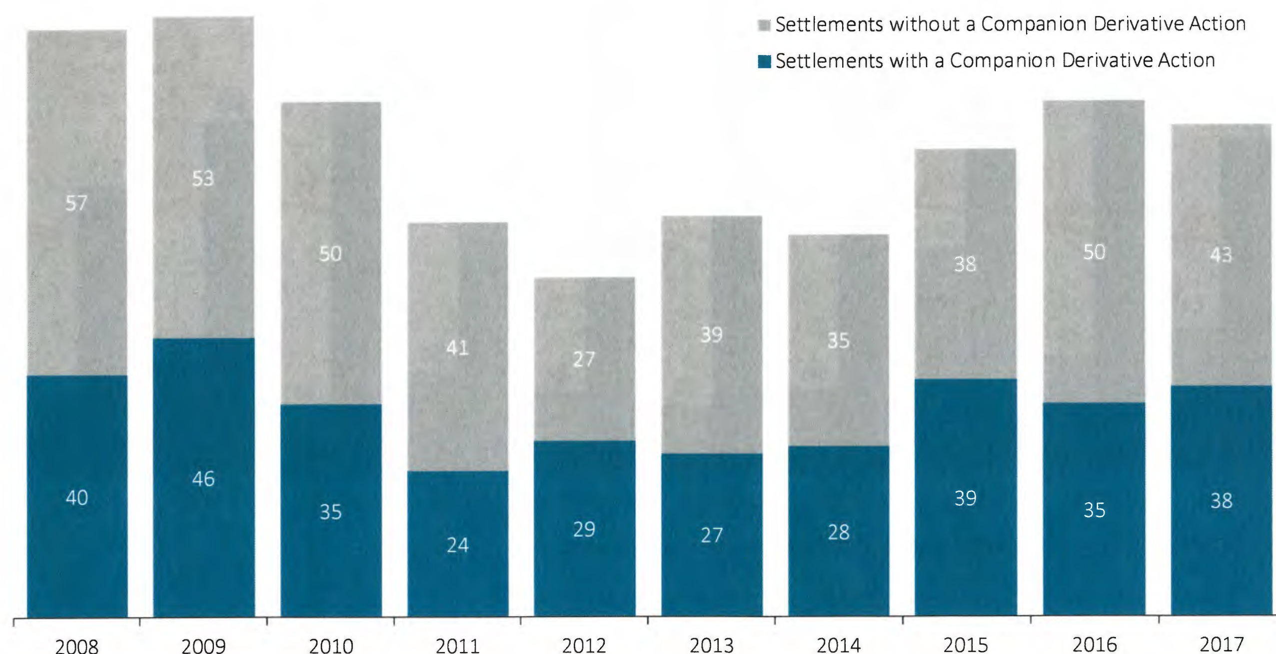
Derivative cases accompanying securities class actions, as described in previous annual reports, are more frequently filed when corresponding securities class actions involve a financial statement restatement or public pension plan lead plaintiff.

As discussed in *Piling On? An Empirical Study of Parallel Derivative Suits*,[10] there is substantial overlap between plaintiff attorneys that tend to file accompanying derivative actions and attorneys that are frequent players in securities class actions. Since most derivative actions are filed as "piggyback suits" to class actions, the latter finding is consistent with plaintiff counsel who are not selected for lead counsel representation in certain securities class actions choosing to follow up with derivative actions.

The percentage of settled cases involving an accompanying derivative action was one of the highest in the last 10 years.

- The increase in the proportion of settled cases involving an accompanying derivative action was driven by a surge in derivative cases corresponding to relatively small settlements. Of cases settling for $5 million or less in 2017, 51 percent were accompanied by derivative actions, compared to 37 percent for the prior nine years.
- Historically, cases involving accompanying derivative actions have tended to settle for higher amounts. In 2017, however, the median settlement for cases with companion derivative actions was $4.3 million, compared to $6.2 million for cases without accompanying derivative actions

Figure 12: Frequency of Derivative Actions
2008–2017



Corresponding SEC Actions

Cases with a corresponding SEC action related to the allegations are typically associated with significantly higher settlement amounts and higher settlements as a percentage of "simplified tiered damages."[11]

- Compared to 2011–2014, the relatively high level of class actions settled over the last three years with corresponding SEC actions is consistent with the SEC's stated focus on financial reporting and disclosure matters during this period.[12]
- Cases with corresponding SEC actions tend to involve larger issuer defendants. For cases settled during 2008–2017, average assets for issuer defendant firms were $135 billion for cases with corresponding SEC actions, compared to only $31 billion for cases without a corresponding SEC action.
- Corresponding SEC actions are also frequently associated with delisted firms. Out of the total 159 settlements during 2008–2017 involving cases with corresponding SEC actions, 63 cases (40 percent) involved issuer defendants that had been delisted

Over 20 percent of settled cases involved a corresponding SEC action.

Figure 13: Frequency of SEC Actions
2008–2017

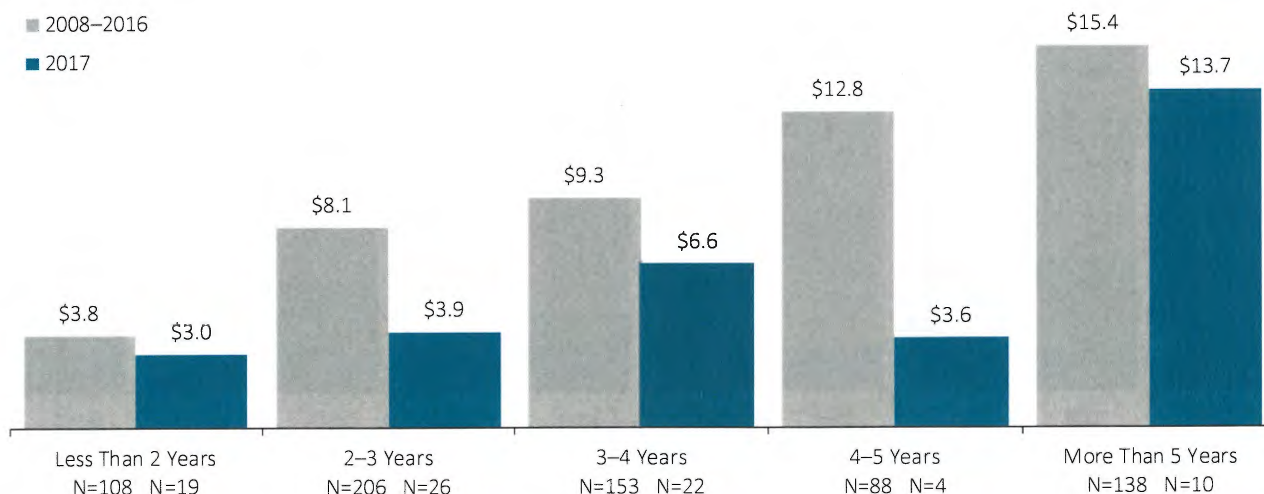
Time to Settlement and Case Complexity

- In 2017, more than 23 percent of cases settled within two years of the filing date, compared to less than 16 percent during 2008–2016.
- Rule 10b-5 cases settling in less than two years in 2017 had median "simplified tiered damages" of only $85 million, compared to a median of $130 million for all settlements in 2017.
- Historically, cases that have taken longer to settle have been associated with higher settlements.
- The median settlement amount for cases taking more than two years to settle was two times the median settlement amount for cases that settled within two years.
- Consistent with the decline in settlement size in 2017, a smaller proportion (17 percent) of cases settled at least four years after filing, compared to 33 percent during 2008–2016.

The average time from filing to settlement was the lowest in the past decade.

- The number of docket entries associated with a case at the time of settlement (see Appendix 7) is highly correlated with the time to settlement, as well as factors that add to case complexity, such as third-party defendants. Accordingly, this variable has been used in prior research as a proxy for the effort incurred by plaintiff counsel in litigating the securities class actions.[13] The number of docket entries at the time of settlement is a statistically significant explanatory variable in regression analyses of settlement outcome determinants (see page 16).

Figure 14: Median Settlement by Duration from Filing Date to Settlement Hearing Date
2008–2017
(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Cornerstone Research's Settlement Prediction Analysis

This research applies regression analysis to examine the relationships between settlement outcomes and certain security case characteristics. Regression analysis is employed to better understand and predict the total settlement amount, given the characteristics of a particular securities case. Regression analysis can also be applied to estimate the probabilities associated with reaching alternative settlement levels. It is also helpful in exploring hypothetical scenarios, including how the presence or absence of particular factors affect predicted settlement amounts.

Determinants of Settlement Outcomes

Based on the research sample of post–Reform Act cases that settled through December 2017, the factors that were important determinants of settlement amounts included the following:

- "Simplified tiered damages"
- Maximum Dollar Loss (MDL)
- Most recently reported total assets of the issuer defendant firm
- Number of entries on the lead case docket
- The year in which the settlement occurred
- Whether a restatement of financials related to the alleged class period was announced
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether a public pension was a lead plaintiff
- Whether the plaintiffs alleged that securities other than common stock were damaged

Regression analyses shows that settlements were higher when "simplified tiered damages," MDL, issuer defendant asset size, or the number of docket entries were larger, or when Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving financial restatements, a corresponding SEC action, a public pension involved as lead plaintiff, or securities other than common stock alleged to be damaged.

Settlements were lower if the settlement occurred in 2010 or later, or if the issuer was distressed.

Almost 75 percent of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database used in this report focuses on cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price and M&A cases).
- The sample is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 1,697 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2017. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[14]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[15] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[16]

Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.

Endnotes

[1] See Adam C. Pritchard and Stephen J. Choi, "Lead Plaintiffs and Their Lawyers: Mission Accomplished, or More to Be Done?," Harvard Law School Forum on Corporate Governance and Financial Regulation, May 25, 2017. See also Charles Silver and Sam Dinkin, "Incentivizing Institutional Investors to Serve as Lead Plaintiffs in Securities Fraud Class Actions," *DePaul Law Review* 57, no. 2 (2008).

[2] See Kevin LaCroix, "Should Shareholder Derivative Litigation Be Eliminated?," *The D&O Diary,* October 4, 2017; and Stephen Bainbridge, "Is There a Case for Abolishing Derivative Litigation?," ProfessorBainbridge.com, October 3, 2017.

[3] See *Securities Class Action Filings—2017 Year in Review,* Cornerstone Research (2018), page 35. Among 2017 settlements, The Rosen Law Firm and Pomerantz LLP have identifiable lead or co-lead roles.

[4] See *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017). Note that "simplified tiered damages" referenced in the current report is identical to the measure referred to as "tiered damages" in *Estimating Damages in Settlement Outcome Modeling*.

[5] "Simplified tiered damages" is calculated for cases that settled after 2005. Importantly, the "simplified tiered damages" approach used for purposes of settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the "true value" of the stock during the alleged class period (or "value line"). The dates used to identify the applicable value line may be supplemented with information from the operative complaint at the time of settlement.

[6] Damages calculations have two components, an estimate of the inflation per share and an estimate of the number of shares damaged. Both "simplified tiered damages" and "estimated damages," as well as the proxy discussed in this report for plaintiff-style damages in '33 Act cases, use a similar methodology to estimate the number of shares damaged. In particular, these damages proxies utilize an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant's common stock is listed. No adjustments are made to the underlying float for institutions, insiders, or short-selling activity. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling are overstated relative to damages estimates developed in conjunction with case-specific economic analysis.

[7] As described in prior reports, per-share inflation for "estimated damages" for cases involving Rule 10b-5 claims is calculated using a market-adjusted, backward-pegged value line.

[8] The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to "simplified tiered damages," the estimation of "simplified statutory damages" makes no adjustments to the underlying float for institutions, insiders, or short-selling activity.

[9] The three categories of accounting issues analyzed in this report are: (1) GAAP violations—cases with allegations involving Generally Accepted Accounting Principles (GAAP); (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.

[10] Stephen J. Choi, Jessica Erickson, and Adam C. Pritchard, "Piling On? An Empirical Study of Parallel Derivative Suits," *Journal of Empirical Legal Studies* 14, no. 4 (2007): 653–682.

[11] It could be that the merits in such cases are stronger, or simply that the presence of an accompanying SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov.

[12] For example, see Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, "Directors Forum 2016 Keynote Address" (San Diego, CA, January 25, 2016).

[13] See Laura Simmons, "The Importance of Merit-Based Factors in the Resolution of 10b-5 Litigation," University of North Carolina at Chapel Hill Doctoral Dissertation (1996); and Michael A. Perino, "Institutional Activism through Litigation: An Empirical Analysis of Public Pension Fund Participation in Securities Class Actions," St. John's Legal Studies Research Paper No. 06-0055 (2006).

[14] Available on a subscription basis.

[15] Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.

[16] This categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in Millions)

	Average	10th	25th	Median	75th	90th
2017	$18.2	$1.5	$2.5	$5.0	$15.0	$34.5
2016	$72.0	$1.9	$4.3	$8.7	$33.7	$149.1
2015	$40.7	$1.4	$2.2	$6.7	$16.8	$97.2
2014	$18.9	$1.7	$3.0	$6.2	$13.6	$51.8
2013	$76.1	$2.0	$3.2	$6.8	$23.3	$86.8
2012	$65.4	$1.3	$2.9	$10.1	$37.9	$122.8
2011	$22.8	$2.0	$2.7	$6.3	$19.6	$45.5
2010	$40.1	$2.2	$4.8	$12.6	$28.1	$89.5
2009	$42.9	$2.7	$4.4	$9.1	$22.9	$75.9
2008	$32.4	$2.3	$4.3	$9.1	$21.6	$57.4
1996–2017	$43.5	$1.7	$3.5	$8.3	$21.3	$74.1

Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Appendix 2: Select Industry Sectors 2008–2017

(Dollars in Millions)

Industry	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Technology	109	$9.8	$199.8	2.2%
Financial	113	$21.2	$459.1	2.0%
Telecommunications	49	$8.0	$160.1	2.1%
Retail	44	$6.6	$140.8	2.3%
Pharmaceuticals	88	$8.6	$339.6	2.5%
Healthcare	19	$8.0	$127.3	3.0%

Note: Settlement dollars and "simplified tiered damages" are adjusted for inflation; 2017 dollar equivalent figures are used. "Simplified tiered damages" are calculated only for cases involving Rule 10b-5 claims.

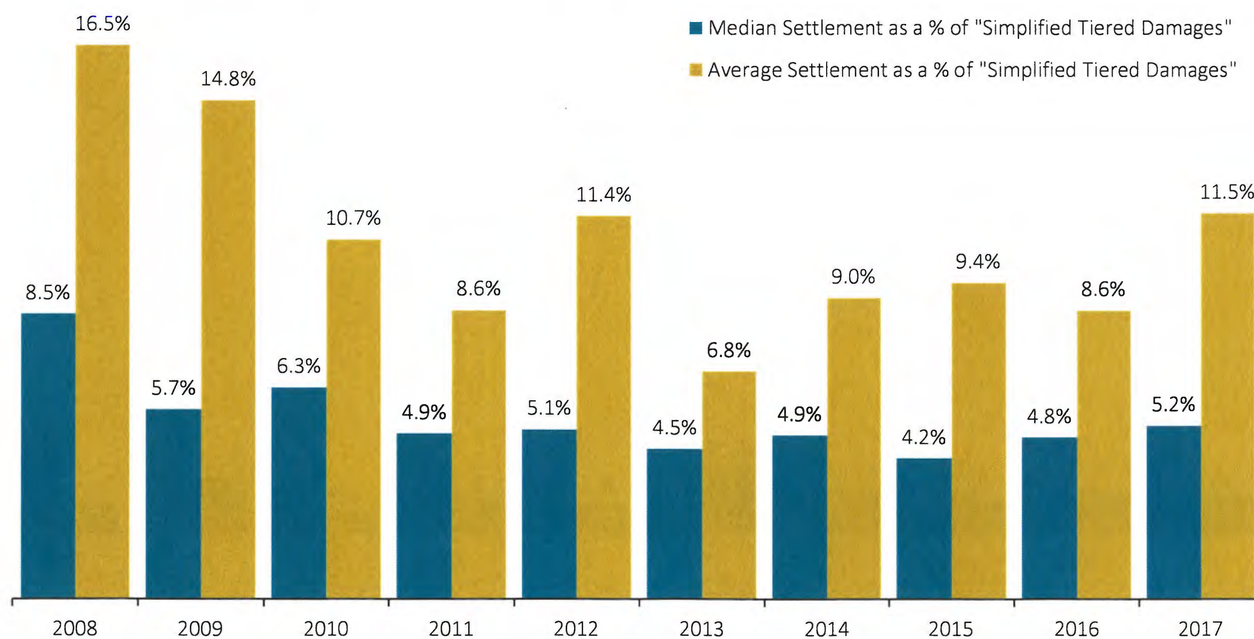
Appendix 3: Settlements by Federal Circuit Court 2008–2017

(Dollars in Millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of "Simplified Tiered Damages"
First	24	$7.3	2.0%
Second	185	$12.0	2.0%
Third	63	$8.7	2.4%
Fourth	27	$8.4	1.8%
Fifth	40	$7.6	2.4%
Sixth	33	$12.9	3.3%
Seventh	38	$9.7	1.7%
Eighth	19	$8.5	3.2%
Ninth	191	$8.0	2.3%
Tenth	19	$8.6	2.3%
Eleventh	47	$6.0	2.3%
DC	4	$38.7	3.7%

Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used. Settlements as a percentage of "simplified tiered damages" calculated only for cases alleging Rule 10b-5 claims.

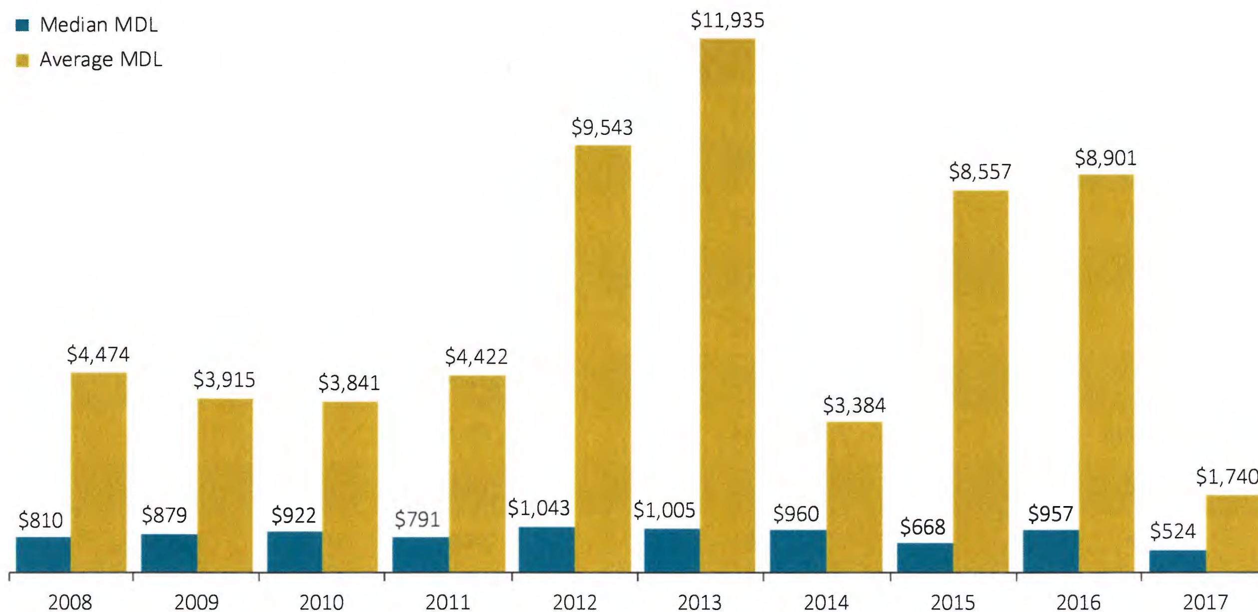
Appendix 4: Median and Average Settlements as a Percentage of "Simplified Tiered Damages" 2008–2017



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims.

Appendix 5: Median and Average Maximum Dollar Loss (MDL) 2008–2017

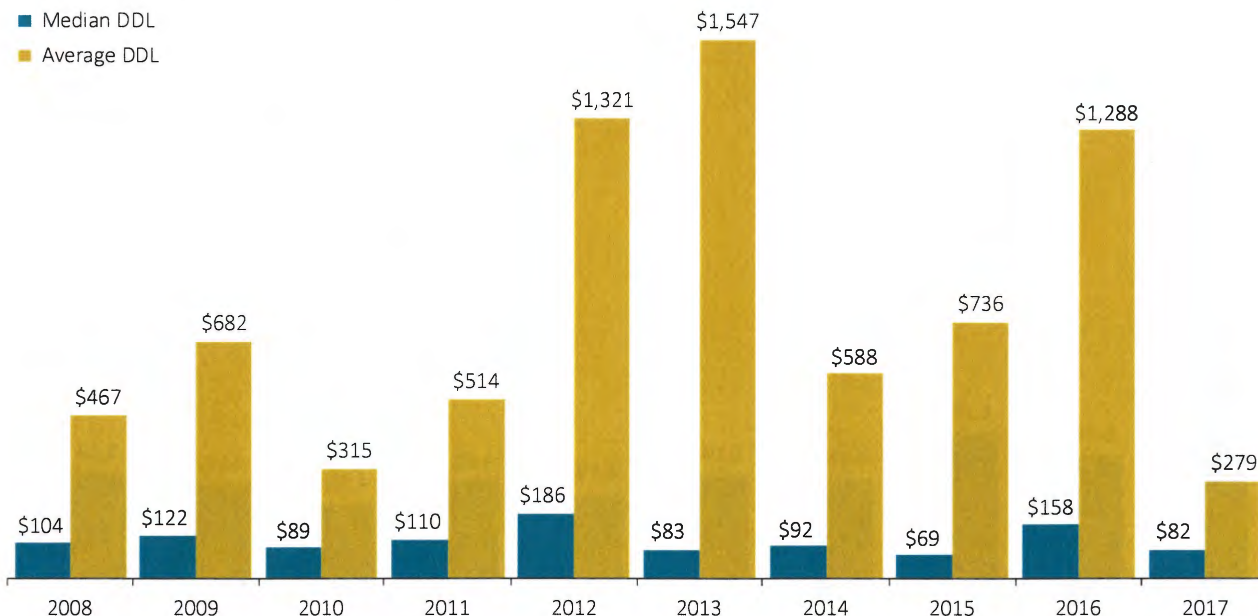
(Dollars in Millions)



Note: MDL is adjusted for inflation based on class period end dates. MDL is the dollar value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period.

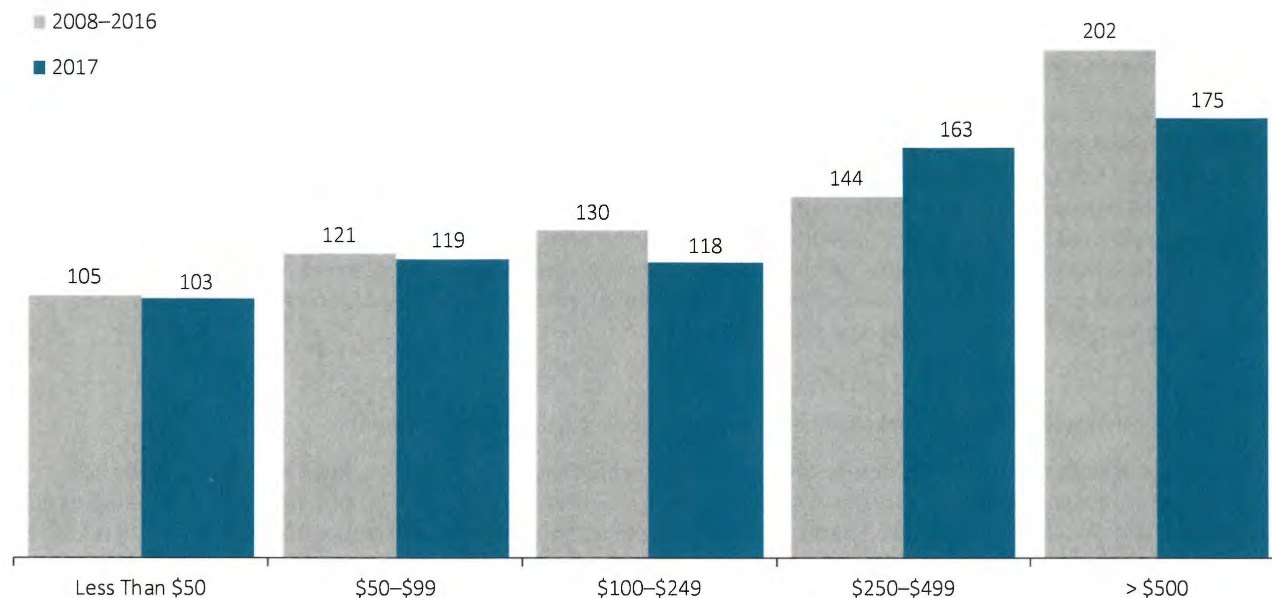
Appendix 6: Median and Average Disclosure Dollar Loss (DDL) 2008–2017

(Dollars in Millions)



Note: DDL is adjusted for inflation based on class period end dates. DDL is the dollar value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period.

Appendix 7: Median Docket Entries by "Simplified Tiered Damages" Range
2008–2017
(Dollars in Millions)



Note: "Simplified tiered damages" are adjusted for inflation; 2017 dollar equivalent figures are used. "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims.

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Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities damages and class certification issues, insider trading, merger valuation, risk management, market manipulation and trading behavior, and real estate markets. She has also consulted on cases related to financial institutions and the credit crisis, municipal bond mutual funds, asset-backed commercial paper conduits, credit default swaps, foreign exchange, and securities clearing and settlement. Dr. Bulan has published several academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

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Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, with recent research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

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Exhibit 3

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ECONOMIC CONSULTING

29 January 2018

25th Anniversary Edition

Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review

Record Pace of Filings Led by a Continued Surge in Merger Objections
Highest Number of Dismissals and Lowest Settlement Values Since the Early 2000s

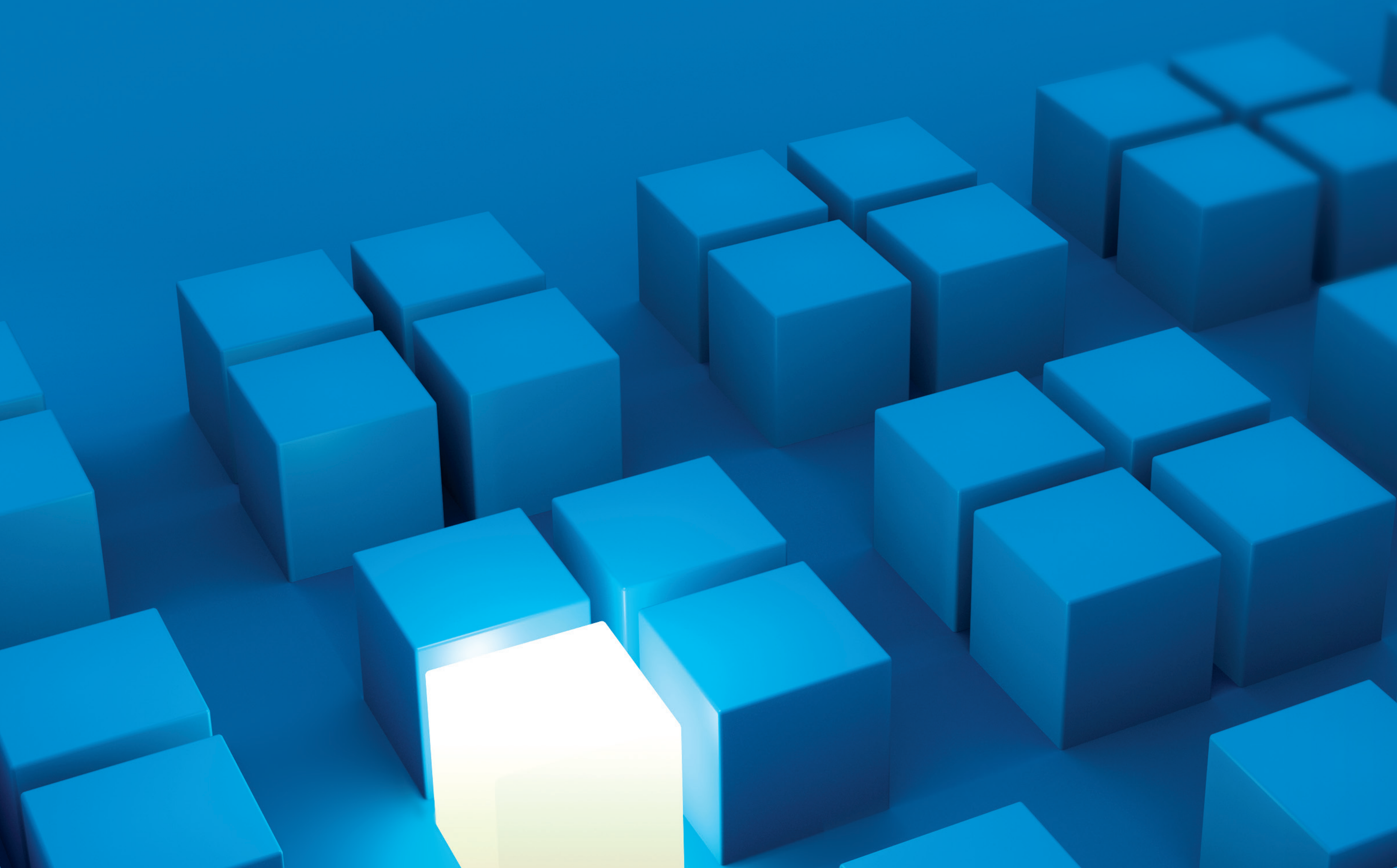
By Stefan Boettrich and Svetlana Starykh

Insight in Economics™

Foreword

I am excited to share our 25th anniversary edition of NERA's *Recent Trends in Securities Class Action Litigation* with you. This marks the 25th year of work by members of NERA's Securities and Finance Practice. In this edition, we document an increase in filings, which we also noted last year, again led by a doubling of merger-objection filings. While this may be the most prominent result, this report contains discussions about other developments in filings, settlements, and case sizes as measured by NERA-defined Investor Losses. Although space limitations prevent us from sharing all of the analyses the authors have undertaken to create this latest edition of our series, we hope you will contact us if you want to learn more, to discuss our data and analyses, or to share your thoughts on securities class actions. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope that you will find it informative and interesting.

Dr. David Tabak
Managing Director



Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review

Record Pace of Filings Led by a Continued Surge in Merger Objections
Highest Number of Dismissals and Lowest Settlement Values Since the Early 2000s

By Stefan Boettrich and Svetlana Starykh[1]

29 January 2018

Introduction and Summary[2]

In 2017, an explosion in securities class action filings reflected growth not seen in almost two decades, and drove the average filing rate to more than one per day. For a second year in a row, growth was dominated by a record number of federal merger-objection filings, continuing a trend sparked by various state court decisions that restricted “disclosure-only” settlements. In the first quarter, more cases alleging violations of SEC Rule 10b-5 under the Securities and Exchange Act of 1934 were filed than in any quarter since the aftermath of the dotcom boom. Over the entire year, filings alleging violations of Rule 10b-5, or Section 11 or Section 12 of the Securities Act of 1933, grew for a record fifth straight year.

The total size of filed securities cases, as measured by NERA-defined Investor Losses, was $334 billion and well above average for a second year, mostly due to numerous large cases alleging various regulatory violations. Allegations related to regulatory violations and misleading performance projections by management seem to be slowly supplanting claims related to accounting issues and missed earnings guidance.

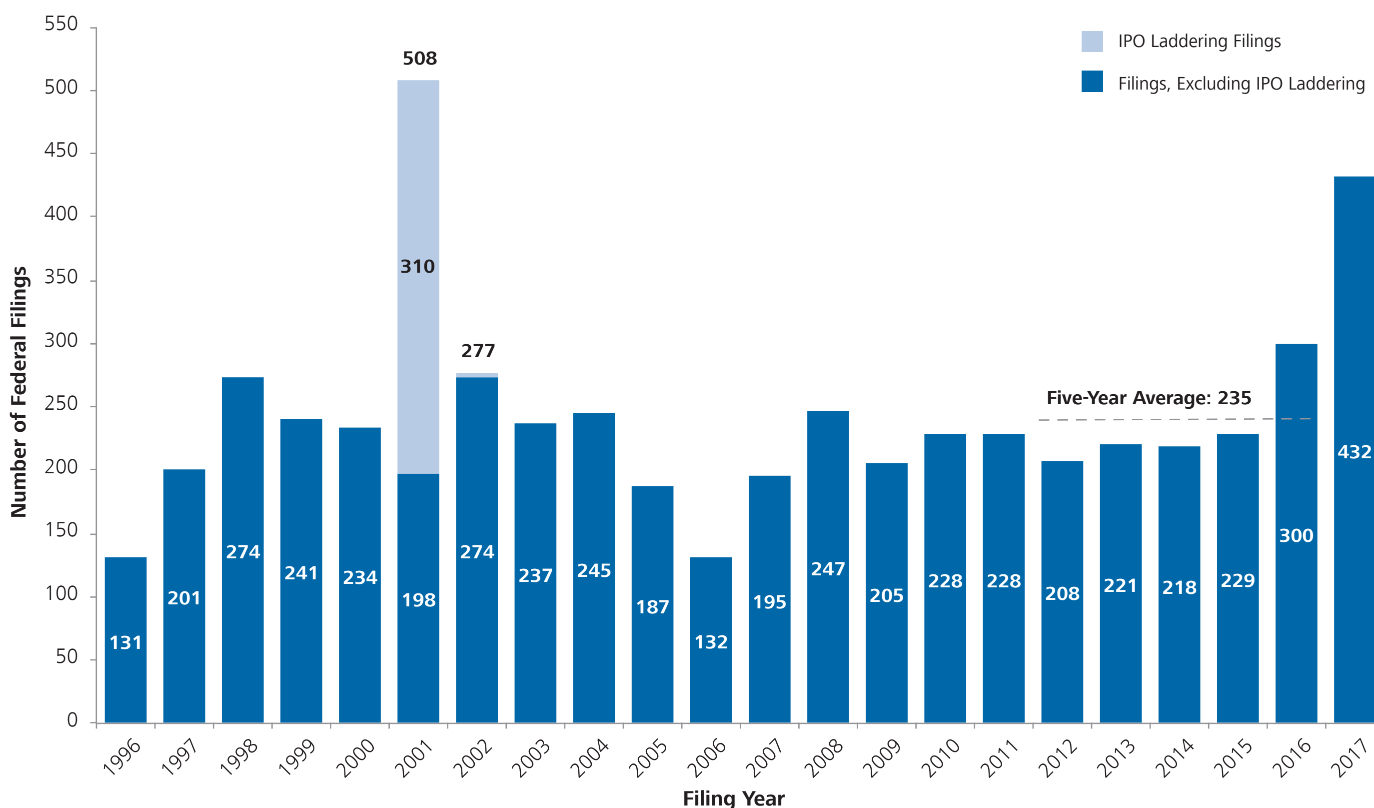
A record rate of case resolution was motivated by a more than 40% spike in dismissals and a 30% increase in settlements. Despite this, the value of settlements plunged to lows not seen since the early 2000s, stemming from a dearth of large or even moderate settlements. Due to an unprecedented rate of voluntary dismissals, nearly 16% of cases filed in 2017 alleging violations of Rule 10b-5, Section 11, or Section 12 were resolved by the end of the year.

Trends in Filings

Number of Cases Filed

There were 432 federal securities class actions filed in 2017, the third straight year of growth (see Figure 1). For the second year in a row, the filing rate was the highest seen since passage of the Private Securities Litigation Reform Act (PSLRA), with the exception of 2001 when an unusually high number of IPO laddering cases were filed. The number of filings was 44% higher in 2017 than 2016, marking the fastest rate of growth since 2007. The number of filings grew 89% over the past two years, a rate not seen since 1998. The level of 2017 filings was also well above the post-PSLRA average of approximately 244 cases per year, and 84% higher than the five-year average rate, continuing a departure from the generally stable filing rate since the aftermath of the 2008 financial crisis.

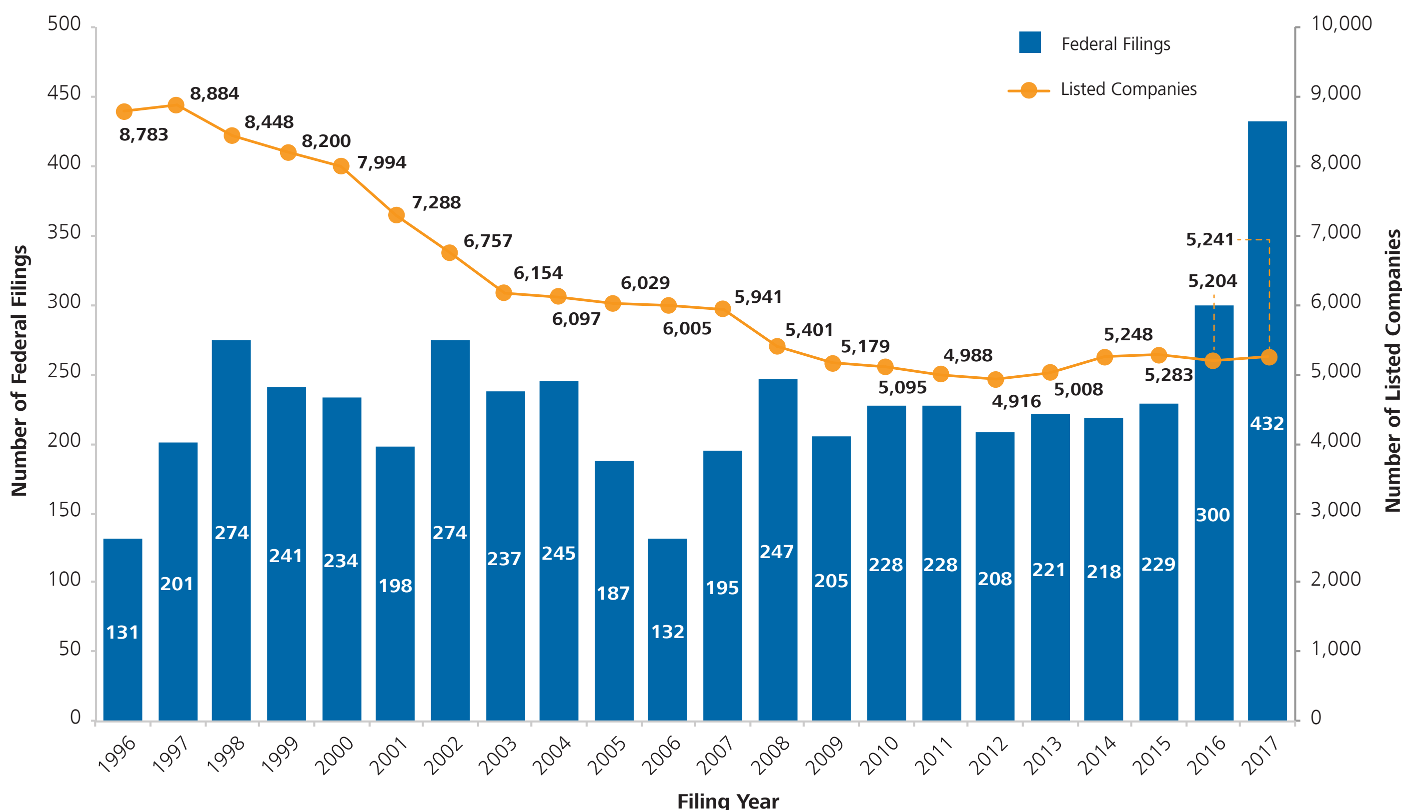
Figure 1. **Federal Securities Class Action Filings**
January 1996–December 2017



As of November 2017, there were 5,241 companies listed on the major US securities exchanges, including the NYSE and Nasdaq (see Figure 2). The 432 federal securities class action suits filed in 2017 involved approximately 8.2% of publicly traded companies, nearly double the rate of 2014, when fewer than 4.2% of companies were subject to a securities class action.

Contrasting with the uptick in listed firm counts over the past five years, the longer-term trend is toward fewer publicly listed companies. Since passage of the PSLRA in 1995, the number of publicly listed companies in the United States has steadily declined by about 3,500, or by more than 40%. Recent research attributed this decline to fewer new listings and an increase in delistings, mostly through mergers and acquisitions.[3]

Figure 2. **Federal Filings and Number of Companies Listed on US Exchanges**
January 1996–December 2017



Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data from 2016 and 2017 were obtained from World Federation of Exchanges (WFE). The 2017 listings data is as of November 2017. Data for prior years was obtained from Meridian Securities Markets and WFE.

Despite the drop in the number of listed companies, the average number of securities class action filings over the preceding five years, of about 235 per year, is still higher than the average filing rate of about 216 over the first five years after the PSLRA went into effect. The long-term trend toward fewer listed companies, coupled with an increased rate of class actions, implies that the average probability of a listed firm being subject to such litigation has increased from 3.2% for the 2000–2002 period to 8.2% in 2017.

Over the past two years, the higher average risk of federal securities class action litigation has been driven by dramatic growth in merger-objection cases, which were previously filed much more often in various state courts, but are now less so, given recent rulings discouraging filings in those jurisdictions. Hence the increase in the average firm's litigation risk might be lower than is indicated above, especially given that the risk of merger-objection litigation is limited to those planning or engaged in M&A activity. The average probability of a firm being targeted by what is often regarded as a "standard" securities class action—one that alleges violations of Rule 10b-5, Section 11, and/or Section 12—was only 4.1% in 2017; higher than the average probability of 3.0% between 2000 and 2002.

Filings by Type

In 2017, each of the major filing types currently tracked in NERA's securities class action database experienced growth (see Figure 3). The continued near-record overall growth rate was driven by a more than doubling of merger-objection filings for the second consecutive year. Federal merger-objection filings typically allege a violation of Section 14(a), 14(d), and/or 14(e) of the Securities and Exchange Act of 1934, and/or a breach of fiduciary duty by managers of the firm being acquired. Filings of standard securities cases were up by 11% over 2016, the fifth consecutive year of steady growth and the longest expansion on record.

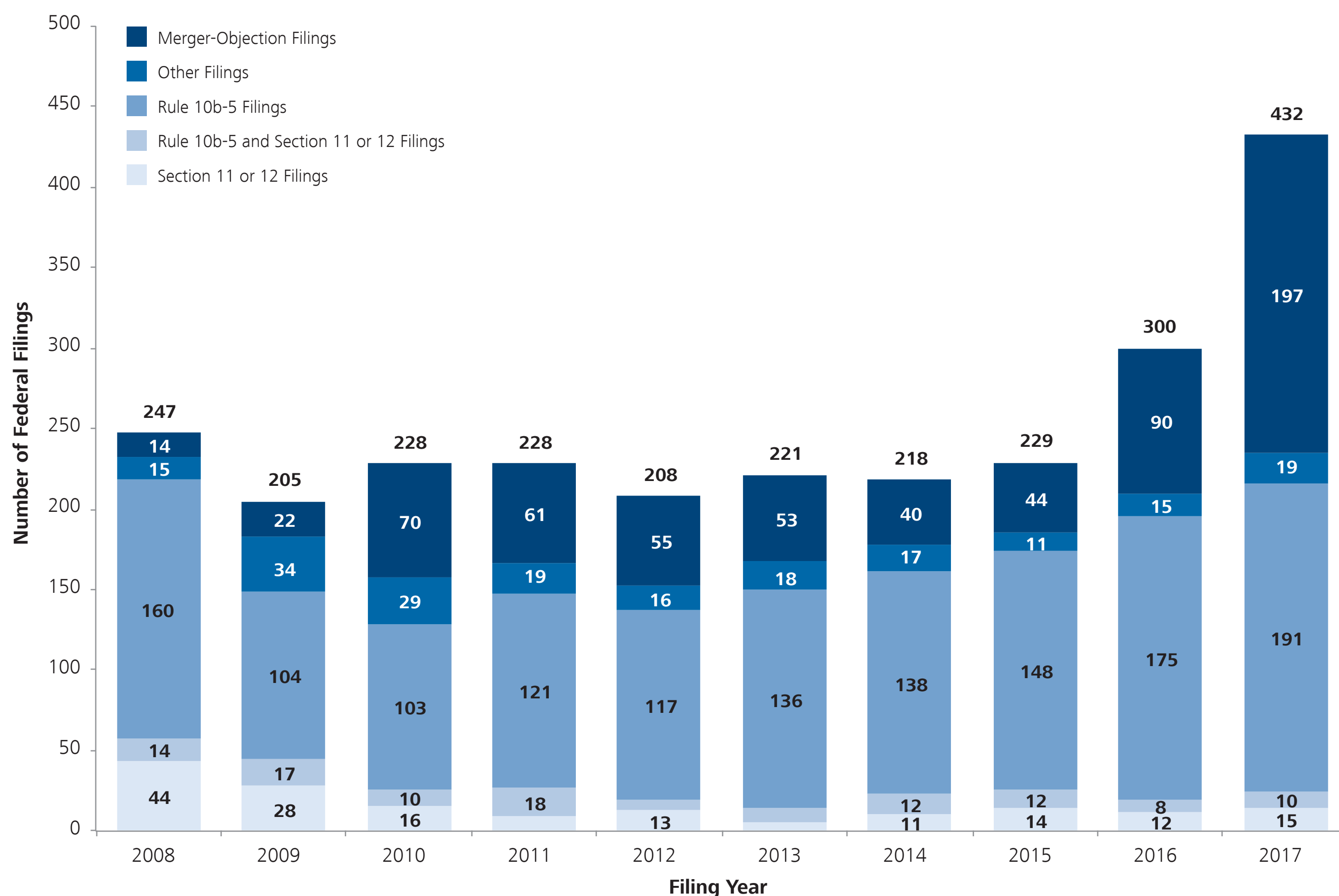
While standard filings still predominate in federal dockets, the 197 merger-objection cases constituted about 46% of all filings and were almost at parity with the 216 standard filings. The continued growth in merger objections likely stemmed from the filing of federal merger-objection suits that would have been filed in other jurisdictions but for various state-level decisions limiting "disclosure-only" settlements, with the most prominent of these being the 22 January 2016 *Trulia* decision in the Delaware Court of Chancery.[4]

Although aggregate merger-objection filings (including those at the state level) may correspond with the rate of merger and acquisitions, such deal activity does not appear to have historically been the primary driver of federal merger-objection filings over multiple years. The number of federal merger-objection filings generally fell between 2010 and 2015, despite increased M&A activity. The higher filing counts in 2016 and 2017 likely stemmed from trends in the choice of jurisdiction rather than trends in deal volume.[5]

On a quarterly basis, the filing of 90 standard cases in the first quarter of 2017 was two-thirds higher than in the fourth quarter of 2016 and the highest quarterly rate since 2001. Cases filed during the first quarter resembled filings over the remainder of the year. Coupled with slower filing rates in each of the latter three quarters, this may portend a slowdown in standard filings in early 2018.

Besides filings of standard cases and merger-objection cases, a variety of other filings rounded out 2017. Several filings alleged breaches of fiduciary duty (including cases regarding the safety of alternative investments and shareholder class rights), but we also saw filings related to alleged fraud in the sale of privately held securities in Uber, Inc.

Figure 3. **Federal Filings by Type**
January 2008–December 2017



Merger-Objection Filings

In 2017, federal merger-objection filings more than doubled for the second consecutive year (see Figure 4). While not matching the dramatic growth in filings in 2010, which did coincide with a doubling in M&A activity, the persistent increase in filings over the past two years overlapped with only marginal growth in M&A deal activity: a slowdown in 2016 was followed by a recovery in 2017.[6] Rather, the jurisdiction where cases were brought and the attributes of target firms imply that this trend, in part, reflects forum selection by plaintiffs.

Historically, state courts, rather than federal courts, have served as the primary forum for merger-objection cases.[7] Between 2010 and 2015, the slowdown in federal merger-objection filings largely mirrored the slowdown in multi-jurisdiction litigation, such as merger objections filed in multiple state courts. This trend, according to researchers, may be due to the increased use and effectiveness of forum selection corporate bylaws that limit the ability of plaintiffs to file claims outside of stipulated jurisdictions.[8]

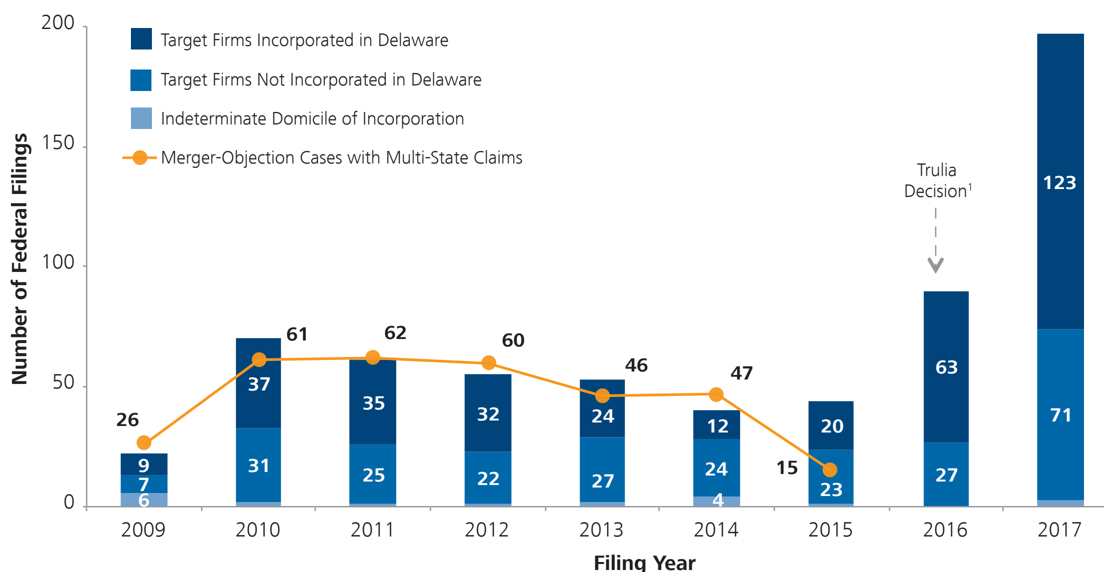
The increased adoption of forum selection bylaws coincided with various state court decisions in 2015 and 2016, particularly those against "disclosure-only" settlements, including the *Trulia* decision handed down by the Delaware Court of Chancery on 22 January 2016.[9] Prior to the *Trulia* decision, the Delaware Court of Chancery attracted about half of eligible merger-objection cases.

Research suggested that the *Trulia* decision would drive merger objections to alternative jurisdictions, such as federal courts.[10] This prediction has largely been borne out thus far. In 2016, more than 90% of the growth in federal merger-objection cases was associated with firms incorporated in Delaware. In 2017, firms incorporated in Delaware accounted for more than half of the annual growth in filings. The 2017 increase in federal filings targeting firms incorporated in Delaware was concentrated in the Third Circuit (of which Delaware is part), where 28% of merger objections were filed, and the Ninth Circuit, where 22% of such cases were filed.

Whether the movement of merger-objection suits out of Delaware persists will likely depend on the extent to which other jurisdictions adopt the Delaware Court of Chancery's lead on disclosure-only settlement disapproval, as well as on the rate of corporate adoption of forum selection bylaws.[11] In the latter part of 2016, the Seventh Circuit ruled against a disclosure-only settlement in *In re: Walgreen Co. Stockholder Litigation*.[12] Unsurprisingly, the proportion of merger objections filed in the Seventh Circuit fell by more than 60% in 2017 versus 2016. In 2017, merger-objection cases filed in the Seventh Circuit were dismissed at nearly double the rate of other circuits.

In 2017, 71 federal merger-objection filings targeted firms not incorporated in Delaware, up from 27 in 2016. A quarter of the growth involved firms incorporated in Maryland and Minnesota, cases that made up nearly half of all merger objections targeting non-Delaware firms filed in the Fourth and Eighth Circuits. After Delaware, firms incorporated in Maryland were most frequently targeted in federal merger objections in both 2016 and 2017. This followed a 2013 decision in Maryland State Circuit Court rejecting a request for attorneys' fees in a disclosure-only settlement.[13]

Figure 4. **Federal Merger-Objection Filings and Merger-Objection Cases with Multi-State Claims**
January 2009–December 2017



Notes: Counts of merger-objection cases with multi-state claims based on data obtained from Matthew Cain and Steven Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016. Data on multi-state claims unavailable for 2016 or 2017. State of incorporation obtained from the Securities and Exchange Commission.

[1] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

Filings Targeting Foreign Companies

Foreign companies continued to be disproportionately targeted in "standard" securities class actions in 2017.[14] Despite making up a relatively stable share of listings, foreign companies' share of filings increased for a fourth consecutive year and such filings made up more than a quarter of all standard filings (see Figure 5).

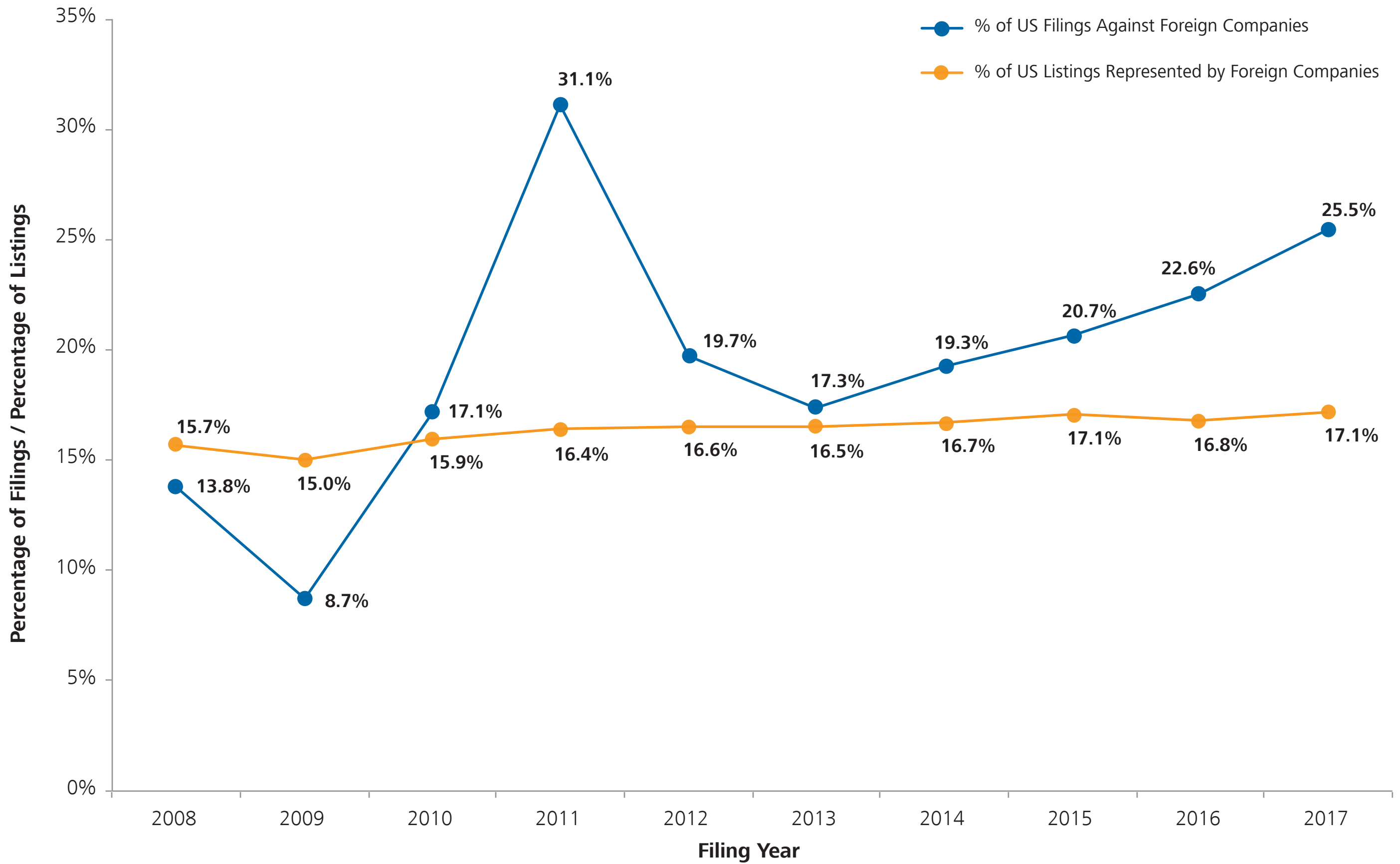
In 2017, there were 55 standard filings against foreign companies, a 25% increase over 2016 and more than a 50% increase over 2015. Recent growth in filings has been driven by alleged regulatory violations. The number of such cases increased by more than 80% in 2017, which followed more than a 50% increase in 2016. In 2017, more than a third of filings against foreign companies alleged regulatory violations.

Filings against foreign companies spanned several economic sectors, with more than 20% targeting firms in the Health Technology and Services Sector (down from more than 25% in 2016). Half of filings against companies in this sector alleged regulatory violations. Over the last five years, the percentage of filings against foreign companies in the Electronic Technology and Technology Services Sector has persistently fallen, from more than 30% of all filings in 2013 to about 8% in 2017.

In 2011, a record 31% of filings targeted foreign companies, mostly due to a surge in litigation against Chinese companies, which was mainly related to a proliferation in so-called *reverse mergers* years earlier. A reverse merger is one whereby a company orchestrates a merger with a publicly traded company listed in the US, thereby enabling access to US capital markets without going through the process of obtaining a new listing.

Merger-objection claims infrequently target foreign companies.[15] In 2017, there were four merger-objection claims against foreign companies (up from two in 2016). These represent 2% of all merger objections, and about 7% of all filings against foreign companies.

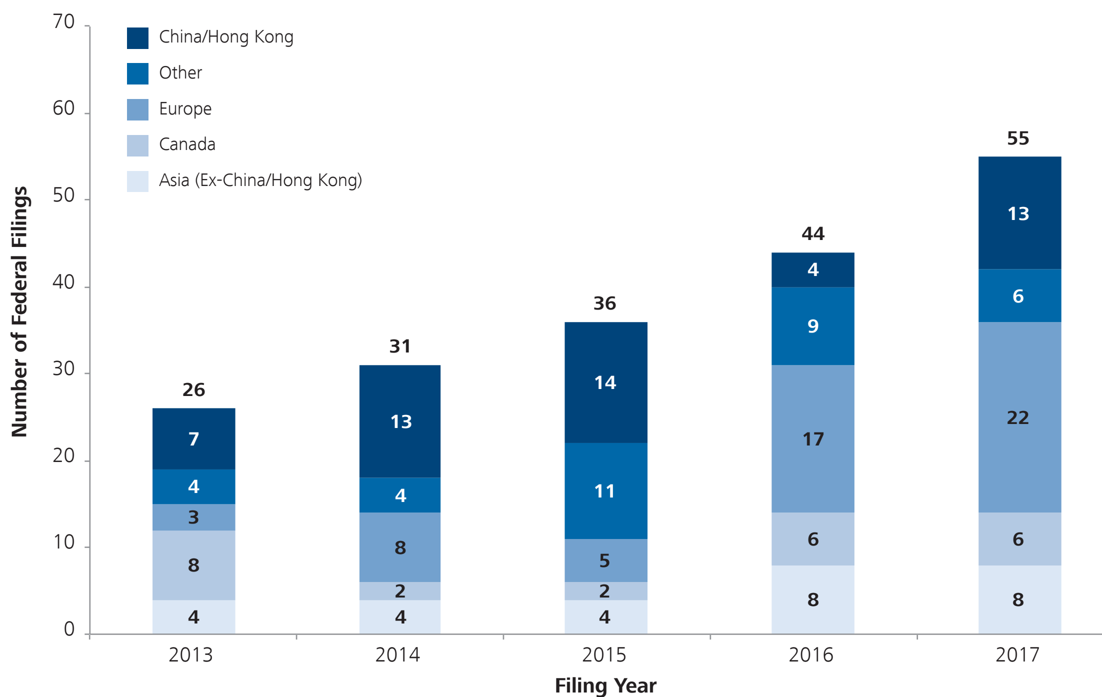
Figure 5. **Foreign Companies: Share of Filings and Share of Companies Listed on US Exchanges**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
January 2008–December 2017



Note: Foreign company status based on country of principal executive offices.

Geographically, growth in standard filings against foreign companies in 2017 was driven by claims against European and Chinese firms (see Figure 6). The number of filings against European firms grew for the second consecutive year, while claims against Chinese firms were resurgent. Over the past five years, filings targeting European firms have overtaken those against Chinese firms. This may be due to a recent tendency for Chinese companies to delist from US exchanges and relist their shares in Chinese markets, which historically have had higher relative valuations.[16] In addition to reducing the overall count of listed Chinese companies in the United States, such a relisting mechanism is more likely to be taken advantage of by firms with relatively weak accounting or disclosure practices.

Figure 6. **Filings Against Foreign Companies**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12 by Region
January 2013–December 2017



Note: Foreign company status based on country of principal executive offices.

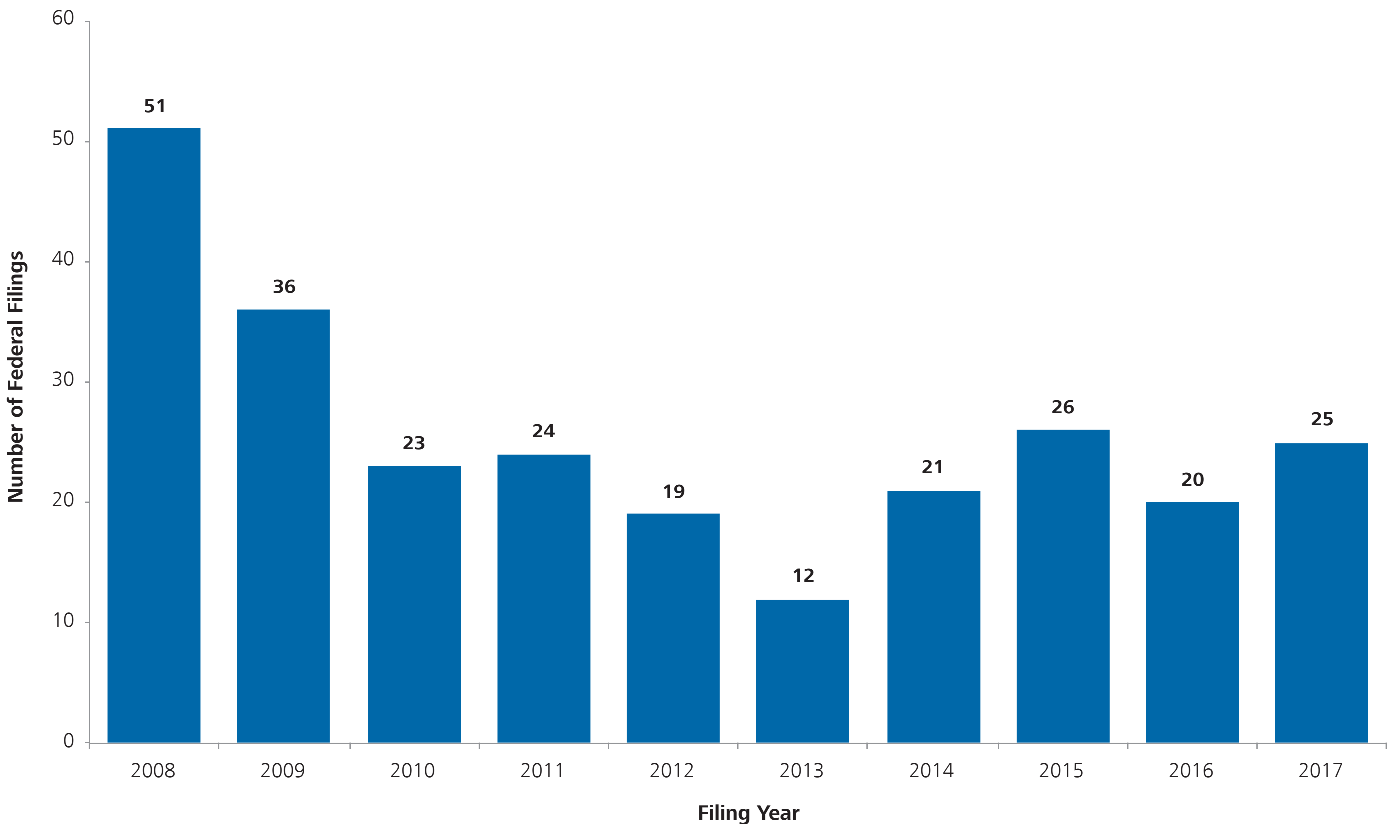
Section 11 Filings

There were 25 federal filings alleging violations of Section 11 in 2017 (see Figure 7). This is approximately the average rate since 2014, a year described by the *Financial Times* as a "bumper IPO year" that precipitated an uptick in Section 11 filings.[17] IPO activity has since declined, falling by more than 40% between 2014 and 2017.[18]

In 2017, Section 11 filings, which spanned multiple economic sectors, were concentrated in the Second and Third Circuits. Filings in the Ninth Circuit were proportionally underrepresented in 2017, accounting for about 60% of the average proportion since 2008.

While potentially just an anomaly, the slowdown in Section 11 litigation in the Ninth Circuit may stem from plaintiffs' filing Section 11 claims in California state courts, perceived as being relatively plaintiff-friendly, in lieu of federal courts.[19] Two factors may reverse this trend in coming years. First, several firms have recently required that Section 11 claims be filed in federal courts.[20] Second, on 27 June 2017, the US Supreme Court granted certiorari in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, to decide whether state courts have jurisdiction over class actions with claims under the Securities Act of 1933, including Section 11 claims.[21]

Figure 7. **Federal Section 11 Filings**
January 2008–December 2017



Aggregate NERA-Defined Investor Losses

In addition to the number of cases filed, we also consider the total potential size of these cases using a metric we label "NERA-defined Investor Losses."

NERA's Investor Losses variable is a proxy for the aggregate amount that investors lost from buying the defendant's stock, rather than investing in the broader market during the alleged class period. Note that the Investor Losses variable is not a measure of damages because any stock that underperforms the S&P 500 would have Investor Losses over the period of underperformance; rather, it is a rough proxy for the relative size of investors' potential claims. Historically, Investor Losses have been a powerful predictor of settlement size. Investor Losses can explain more than half of the variance in the settlement values in our database.

We do not compute NERA-defined Investor Losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are IPO laddering cases and merger-objection cases.

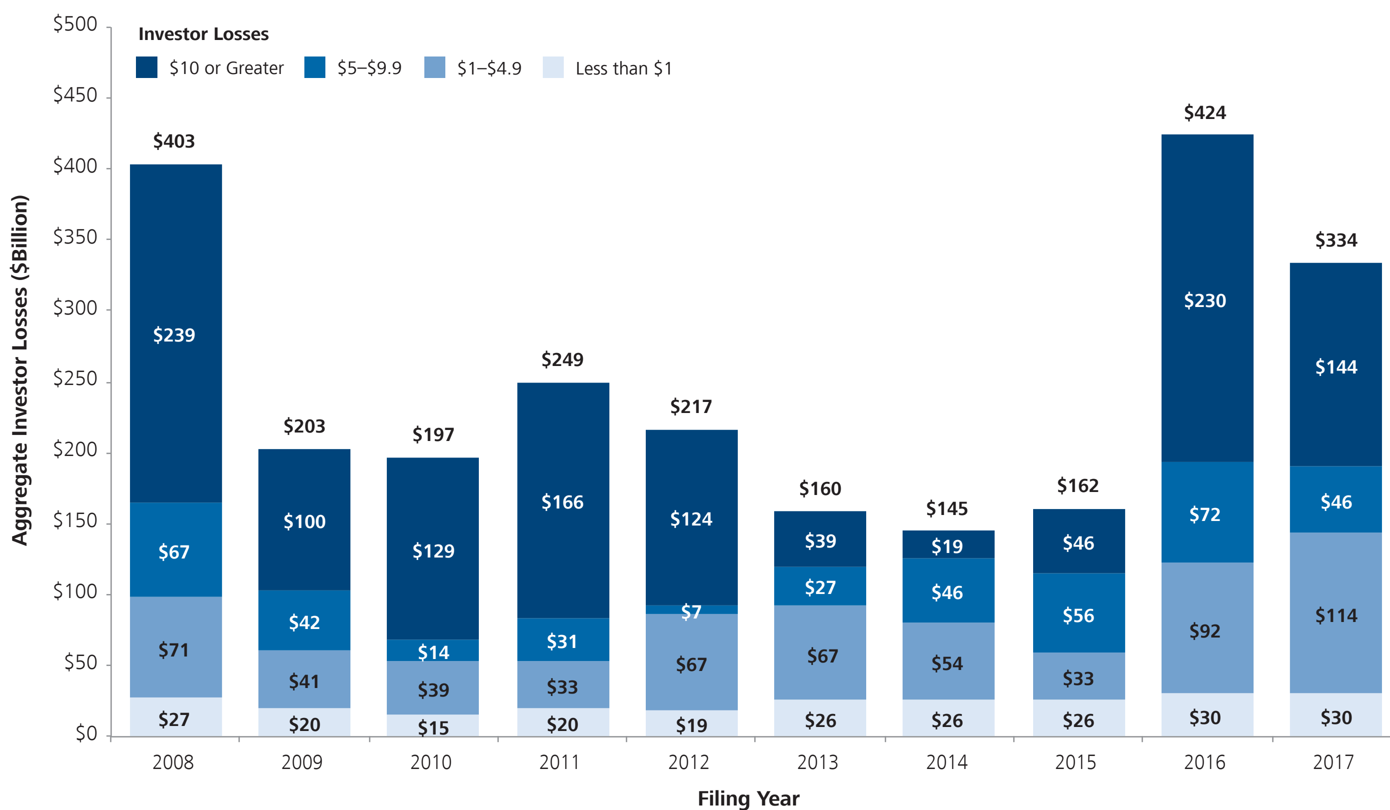
In 2017, aggregate NERA-defined Investor Losses (a measure of case size) was $334 billion; 50% more than the five-year average of $222 billion (see Figure 8). The increase in total case size since 2015 was due to a tripling of filings with Investor Losses between $1 billion and $5 billion, and a jump in filings with very large Investor Losses (over $10 billion).

Although down from the 2016 record, 2017 marked the second year in a row since 2008 in which NERA-defined Investor Losses exceeded $300 billion. Like in 2016, the high level of Investor Losses in 2017 stemmed from the number and size of filings claiming regulatory violations (i.e., those alleging a failure to disclose a regulatory issue), which totaled $163 billion. Five of the eight cases in the largest strata of Investor Losses alleged regulatory violations.

A considerable share of NERA-defined Investor Losses in 2016 were tied to two major industrial antitrust investigations. The fact that these were one-off events suggested that aggregate case size would fall back considerably in 2017.[22] Although total Investor Losses did decline in 2017, the metric was still more than double that of 2015 due to more filings (especially of cases with $1 to $5 billion in Investor Losses), and, in particular, more regulatory filings. This indicates that filings alleging regulatory violations, which tend to have higher Investor Losses, are becoming more broadly based and potentially a stronger driver of Investor Losses going forward. Details of filings alleging regulatory violations are discussed in the *Allegations* section below.

Excluding regulatory claims, aggregate NERA-defined Investor Losses were $171 million, down from $262 million in 2016. Notable cases with very large Investor Losses that did not allege regulatory violations included a data breach case against Yahoo! Inc. and a case against Facebook, Inc. related to disclosure of customer video screening times.

Figure 8. **Aggregate NERA-Defined Investor Losses ($Billion)**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
January 2008–December 2017



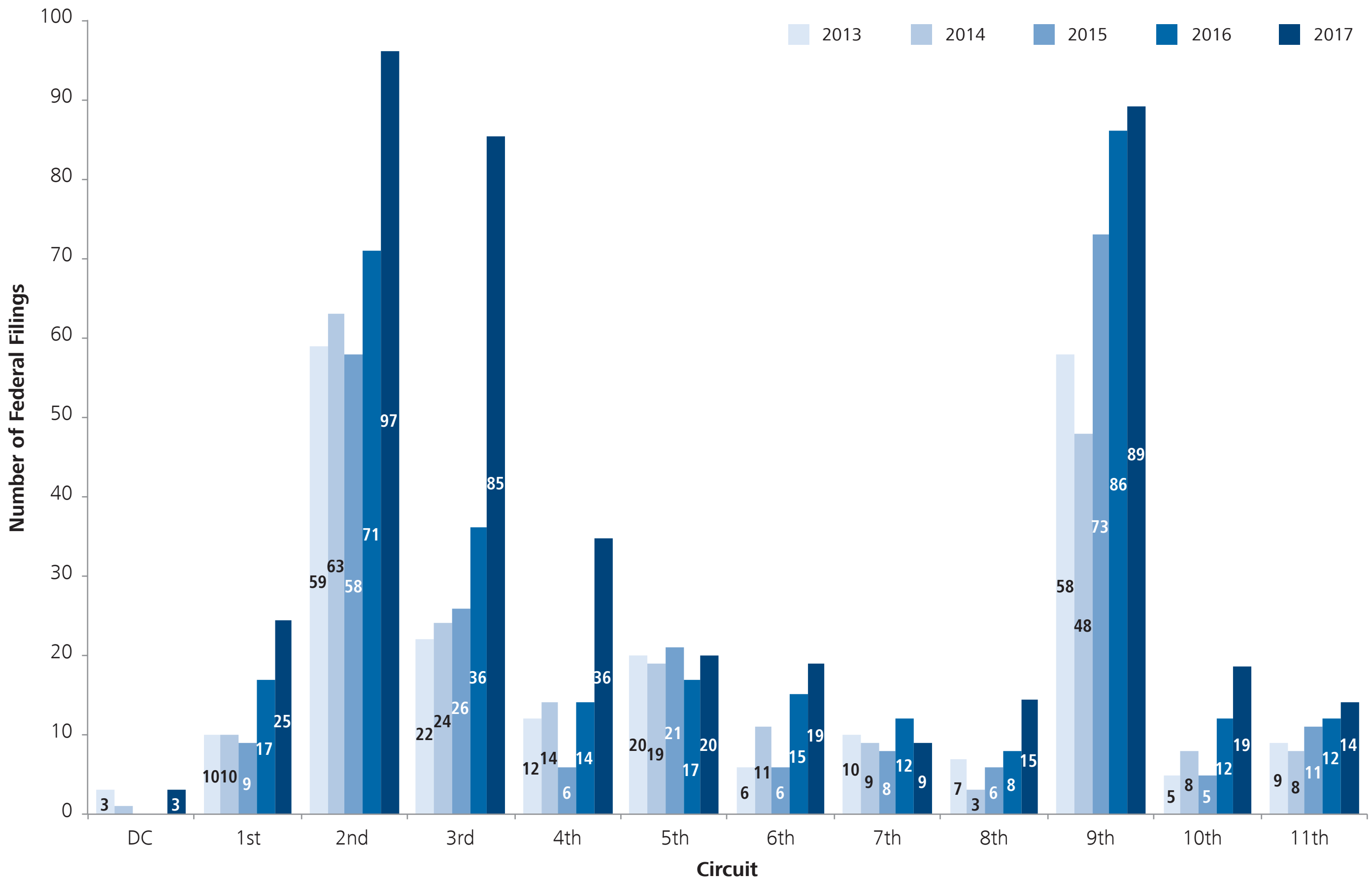
Filings by Circuit

In 2017, filings increased in every federal circuit except the Seventh Circuit, primarily due to the jump in federal merger-objection cases (see Figure 9). Although the Second and Ninth Circuits continued to have the most filings, rapid growth in merger objections accounted for the vast majority of filings in the First, Third, and Fourth Circuits, with filings more than doubling in the Third and Fourth Circuits.

Excluding merger objections, filings in the Second Circuit grew by a third to 84, contrasting with the Ninth Circuit, in which non-merger-objection filings fell by 12% to 51. As in the past, non-merger-objection filings in the Ninth Circuit were dominated by claims against firms in the Electronic Technology and Technology Services Sector. There was also a 60% jump in non-merger-objection cases in the Third Circuit. As in the past, the Third Circuit was subject to a disproportionate number of claims in the Health Technology and Services Sector (despite a general slowdown in such filings). This was mostly driven by the fact that the Third Circuit has a higher proportion of firms in the Pharmaceutical Preparations industry (SIC code 2834), an industry that dominates filings in Health Technology and Services Sector.[23]

The number of merger-objection filings quadrupled in the Third Circuit, which includes Delaware. However, acceleration in the number of such filings was greatest in the Eighth Circuit, where the sharpest increase was seen among firms incorporated in Minnesota. The Seventh Circuit is the only circuit where merger-objection filings fell, which follows its 2016 ruling against disclosure-only settlements.[24] Despite remarkable growth in merger objections in certain circuits, it may be too early to identify the circuits that would be most likely to accommodate such filings. Rather, growth in merger-objection filings at the circuit level is likely more reflective of opposition to such filings at the state level.

Figure 9. **Federal Filings by Circuit and Year**
January 2013–December 2017



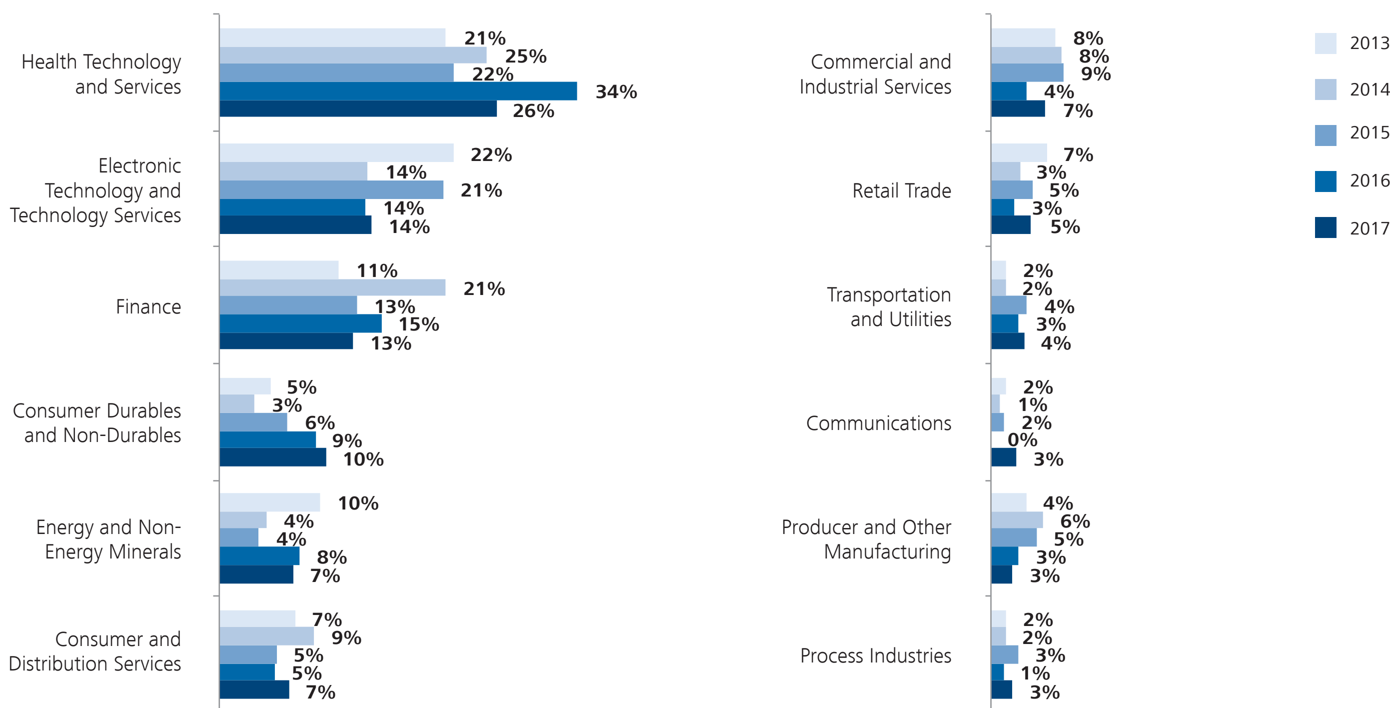
Filings by Sector

In 2017, filing counts were highest in the three historically dominant sectors, which include firms involved in health care, technology, and financial services (see Figure 10). However, the share of filings in these sectors fell from 63% in 2016 to 53% in 2017.

Claims against firms in the Health Technology and Services Sector were again dominated by filings against firms in the Pharmaceutical Preparations industry (SIC code 2834), which constituted about 63% of filings in the sector. A rise in the number of filings against firms in the Commercial and Industrial Services Sector coincided with an increase in filings alleging regulatory violations and misleading future performance, both of which targeted firms in that sector.

Of industries with more than 25 publicly traded companies, the industry with the highest percentage of US companies targeted by litigation was the Motor Vehicles and Equipment industry (SIC 371), where 10% of firms were targeted. Nine percent of firms in the Telephone Communications industry (SIC 481) faced litigation, while more than 8% of firms in the Drugs industry (SIC 283) were targeted. Due to alleged manipulative financing schemes by Kalani Investments Limited affecting multiple Greek shipping companies, filings targeted 8% of firms in the Deep Sea Foreign Transport of Freight industry (SIC 441).

Figure 10. **Percentage of Federal Filings by Sector and Year**
Excluding Merger-Objection Cases
January 2013–December 2017



Note: This analysis is based on the FactSet Research Systems Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Allegations

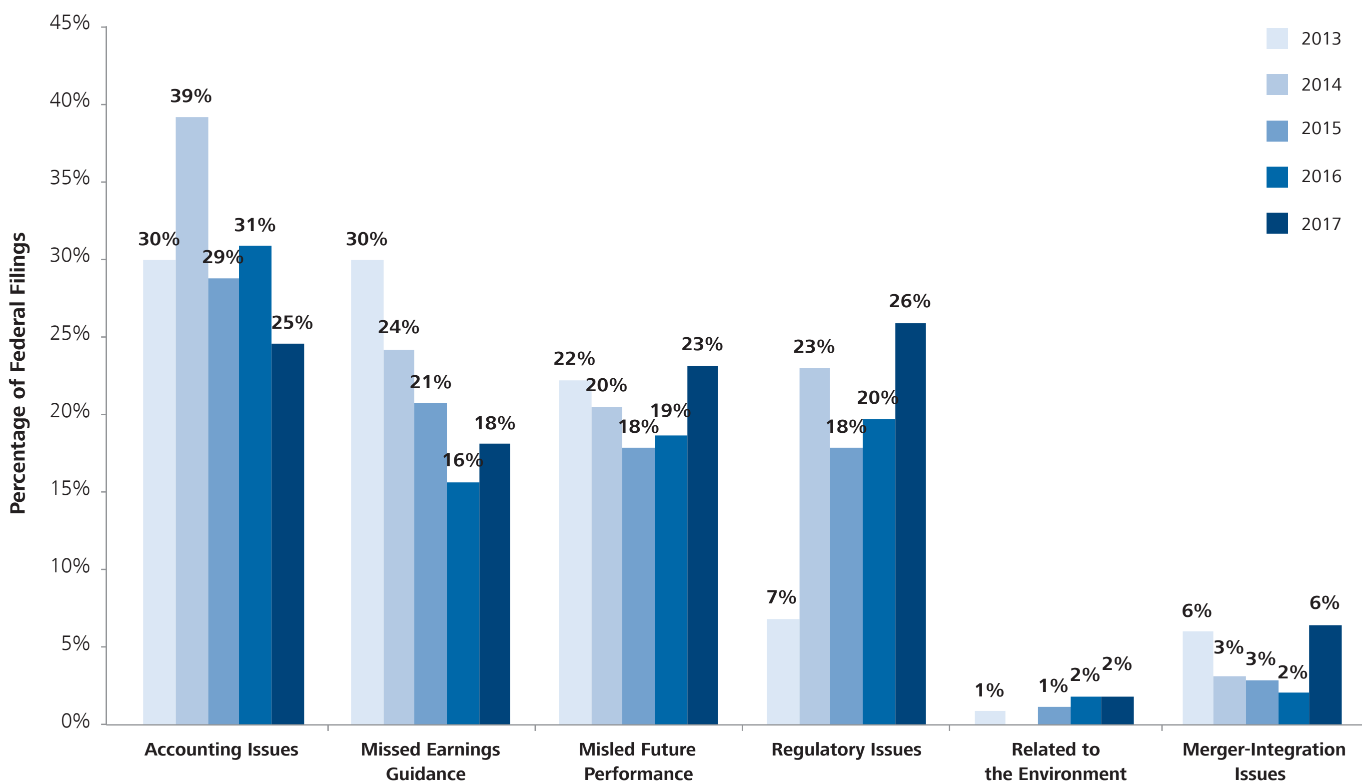
In 2017, the number of cases alleging regulatory violations increased for the second consecutive year (see Figure 11). The filing of 56 regulatory cases was 43% higher than 2016, and accounted for about 26% of standard filings in 2017. Such cases accounted for a total of $163.2 billion in NERA-defined Investor Losses, or nearly half of the 2017 total, compared with $161.7 billion in Investor Losses in 2016, or about 38% of the 2016 total.

In 2017, we witnessed the filing of large cases alleging regulatory violations that spanned multiple industries. In 2016, two widespread investigations into two industries accounted for nearly 80% of NERA-defined Investor Losses tied to regulatory violations (about $127 billion).[25] However, in 2017, not only did cases alleging regulatory violations account for more Investor Losses, but those Investor Losses were distributed across more cases and industries. Median NERA-defined Investor Losses for regulatory cases were also higher, increasing from $250 million over the 2014-2015 period to $1.05 billion over the 2016-2017 period. The largest regulatory cases involved several industries and included allegations related to safety recalls, emissions defeat devices, customer account creation, and antitrust violations.

The number of filings alleging misleading future performance rose for the second consecutive year. Such allegations are more frequent in the Health Technology and Services Sector, and particularly in the Pharmaceutical Preparations industry (SIC code 2834), which sees many cases related to drug development.

Most complaints include a wide variety of allegations, not all of which are depicted here. Due to multiple types of allegations in complaints, the same case may be included in multiple categories.

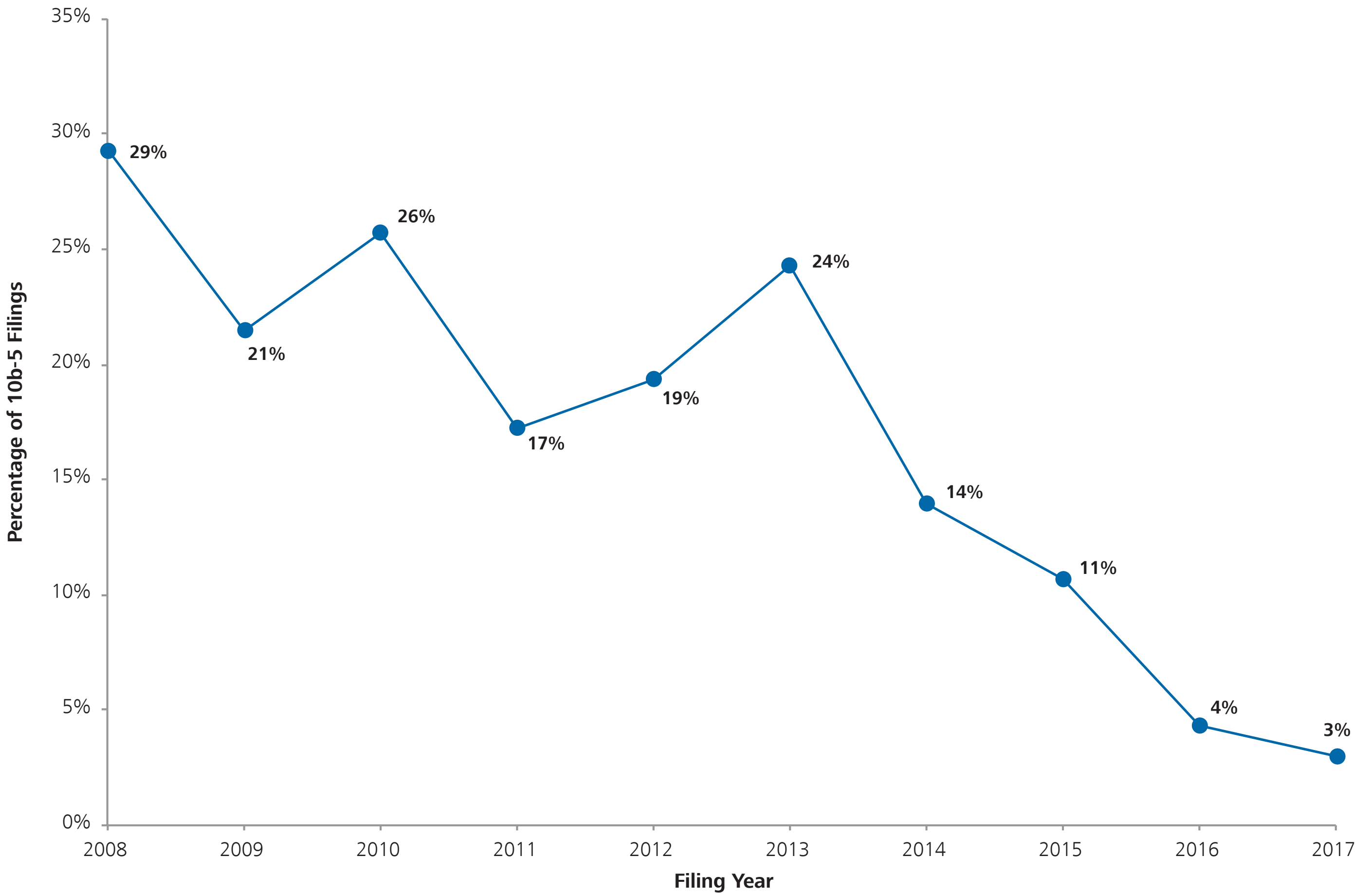
Figure 11. **Types of Misrepresentations Alleged**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
January 2013–December 2017



Alleged Insider Sales

The percentage of Rule 10b-5 class actions that alleged insider sales continued to decrease in 2017, dropping to 3% and marking a fourth consecutive record low (see Figure 12). Cases alleging insider sales were more common in the aftermath of the financial crisis, when a quarter of filings included insider trading claims. In 2005, half of Rule 10b-5 class actions filed included such claims.

Figure 12. **Percentage of Rule 10b-5 Filings Alleging Insider Sales by Filing Year**
January 2008–December 2017



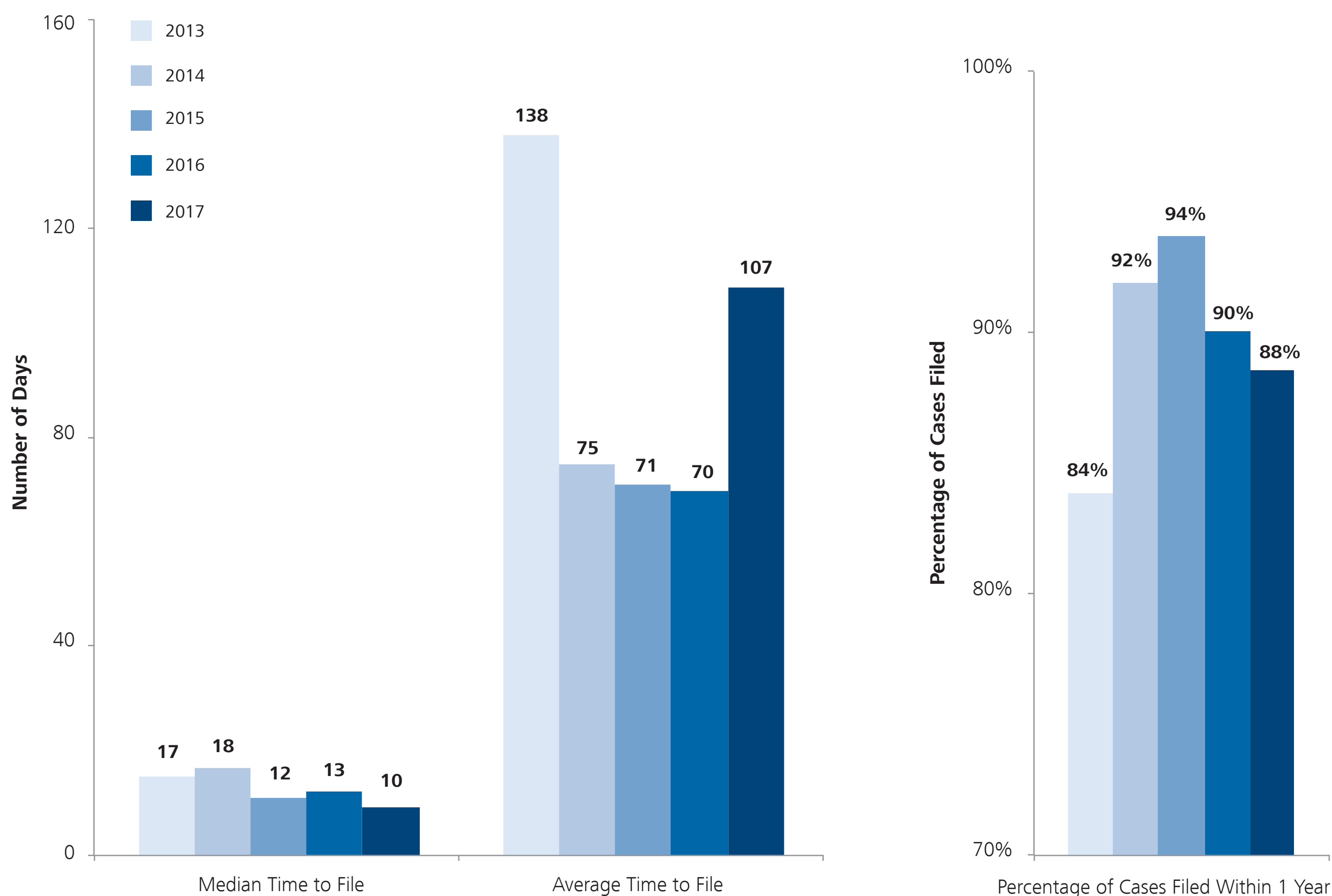
Time to File

The term "time to file" denotes the time that has elapsed between the end of the alleged class period and the filing date of the first complaint. Figure 13 illustrates how the median time and average time to file (in days) have changed over the past five years.

The median time to file fell to a record low of 10 days in 2017, indicating that it took 10 days or less to file a complaint in 50% of cases. This shows a lower frequency of cases with long periods of time between when an alleged fraud was revealed and the filing of a related claim. While the median time to file continued to drop, the average time was affected by 10 cases with very long filing delays. One case against Rio Tinto, regarding the valuation of mining assets in Mozambique, took more than 4.5 years to file and boosted the average time to file by nearly 9%.[26]

Despite the small minority of cases with very long times to file, the data generally point toward a lower incidence of cases with long periods between the date of discovery of an alleged fraud and the date when a related claim is filed.

Figure 13. **Time to File Rule 10b-5 Cases from End of Alleged Class Period to File Date**
January 2013–December 2017



Note: Excludes cases where the alleged class period could not be unambiguously determined.

Analysis of Motions

NERA's statistical analysis has found robust relationships between settlement amounts and the stage of the litigation at which settlements occur. We track filings and decisions on three types of motions: motion to dismiss, motion for class certification, and motion for summary judgment. For this analysis, we include securities class actions in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, or Section 12 is alleged.

As shown in the below figures, we record the status of any motion as of the resolution of the case. For example, a motion to dismiss which had been granted but was later denied on appeal is recorded as denied, even if the case settles without the motion being filed again.

Motions for summary judgment were filed by defendants in 7.5%, and by plaintiffs in only 2.2%, of the securities class actions filed and resolved over the 2000–2017 period, among those we tracked.[27]

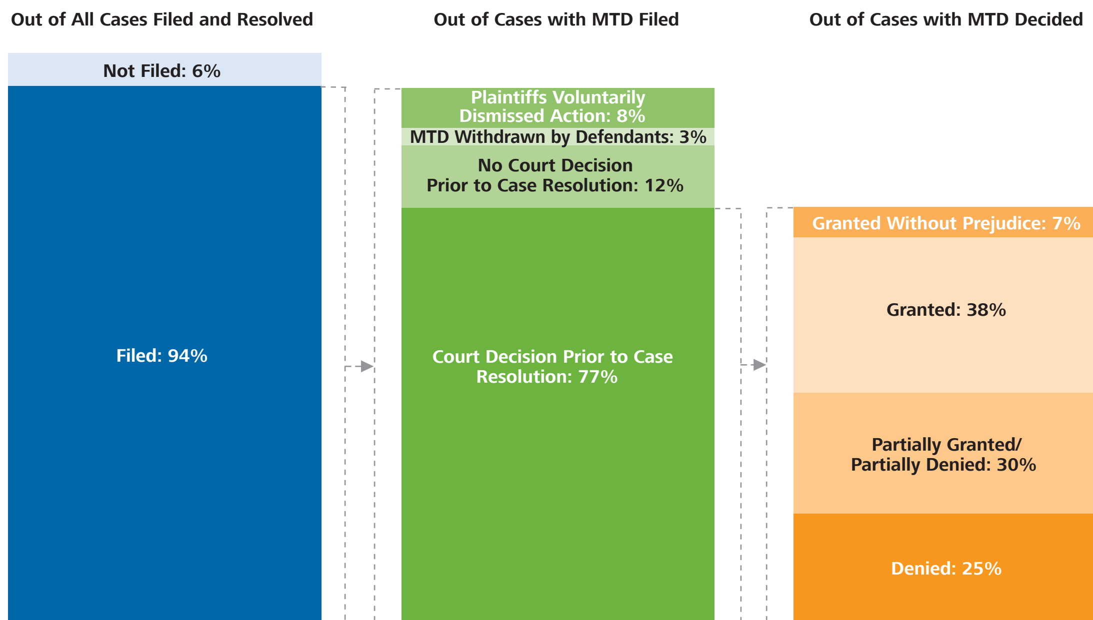
Outcomes of motions to dismiss and motions for class certification are discussed below.

Motion to Dismiss

A motion to dismiss was filed in 94% of the securities class actions tracked. However, the court reached a decision on only 77% of the motions filed. In the remaining 23% of cases in which a motion to dismiss was filed, either the case resolved before a decision was reached, plaintiffs voluntarily dismissed the action, or the motion to dismiss itself was withdrawn by defendants (see Figure 14).

Out of the motions to dismiss for which a court decision was reached, the following three outcomes capture all of the decisions: granted with or without prejudice (45%), granted in part and denied in part (30%), and denied (25%).

Figure 14. **Filing and Resolutions of Motions to Dismiss**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
Excluding IPO Laddering Cases
Cases Filed and Resolved January 2000–December 2017

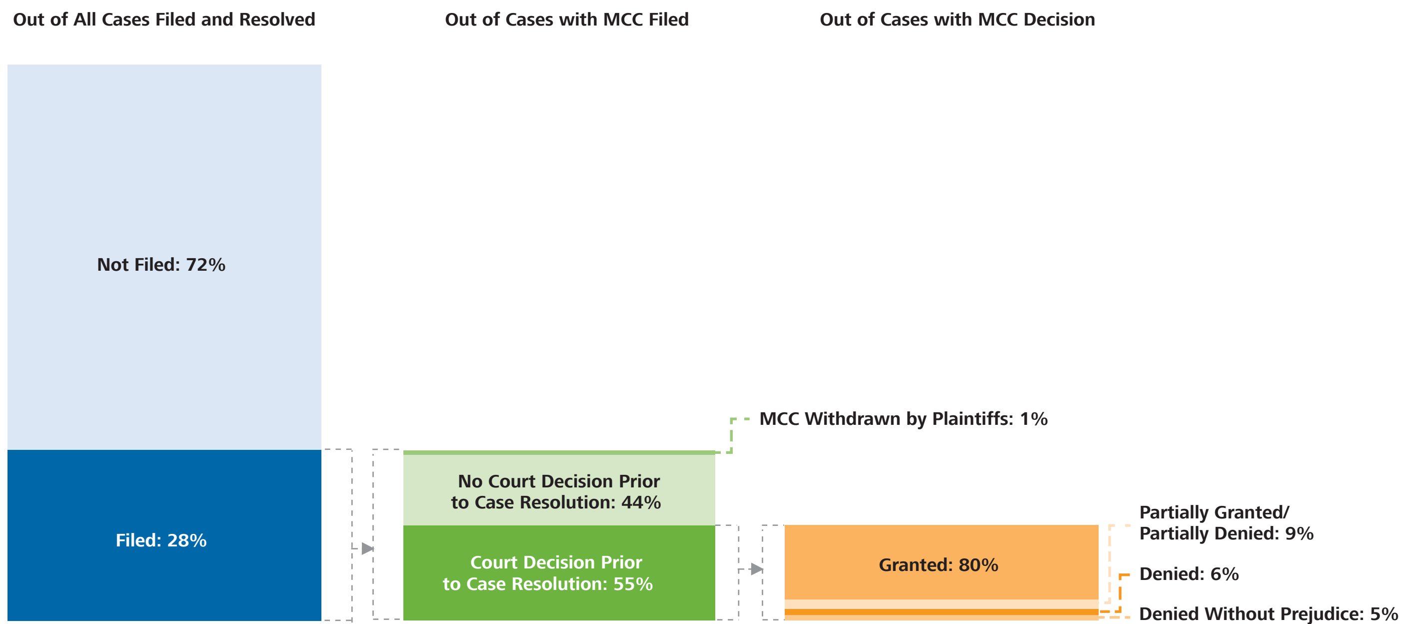


Note: Includes cases in which holders of common stock are part of the class.

Motion for Class Certification

Most cases were settled or dismissed before a motion for class certification was filed: 72% of cases fell into this category. Of the remaining 28%, the court reached a decision in only 55% of the cases in which a motion for class certification was filed. Overall, only 15% of the securities class actions filed (or 55% of the 28%) reached a decision on the motion for class certification (see Figure 15). According to our data, 89% of the motions for class certification that were decided were granted in full or partially.

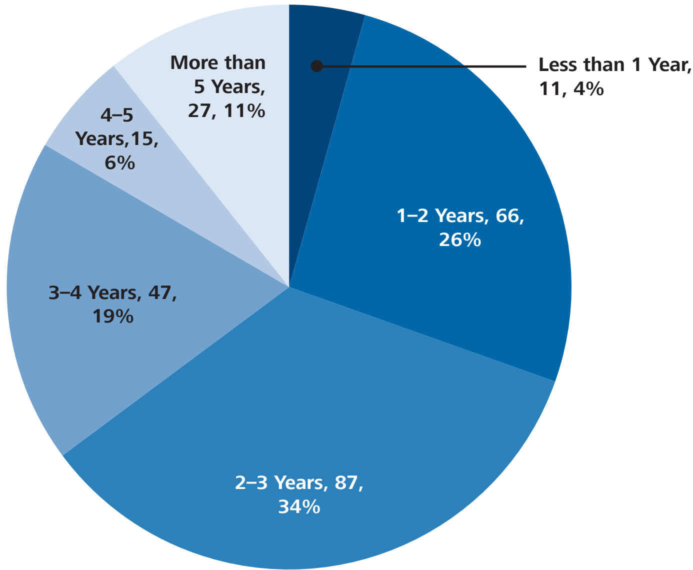
Figure 15. **Filing and Resolutions of Motions for Class Certification**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
Excluding IPO Laddering Cases
Cases Filed and Resolved January 2000–December 2017



Note: Includes cases in which holders of common stock are part of the class.

Approximately 65% of the decisions handed down on motions for class certification were reached within three years from the original filing date of the complaint (see Figure 16). The median time was about 2.5 years.

Figure 16. **Time from First Complaint Filing to Class Certification Decision**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
Excluding IPO Laddering Cases
Cases Filed and Resolved January 2000–December 2017



Note: Includes cases in which holders of common stock are part of the class.

Trends in Case Resolutions

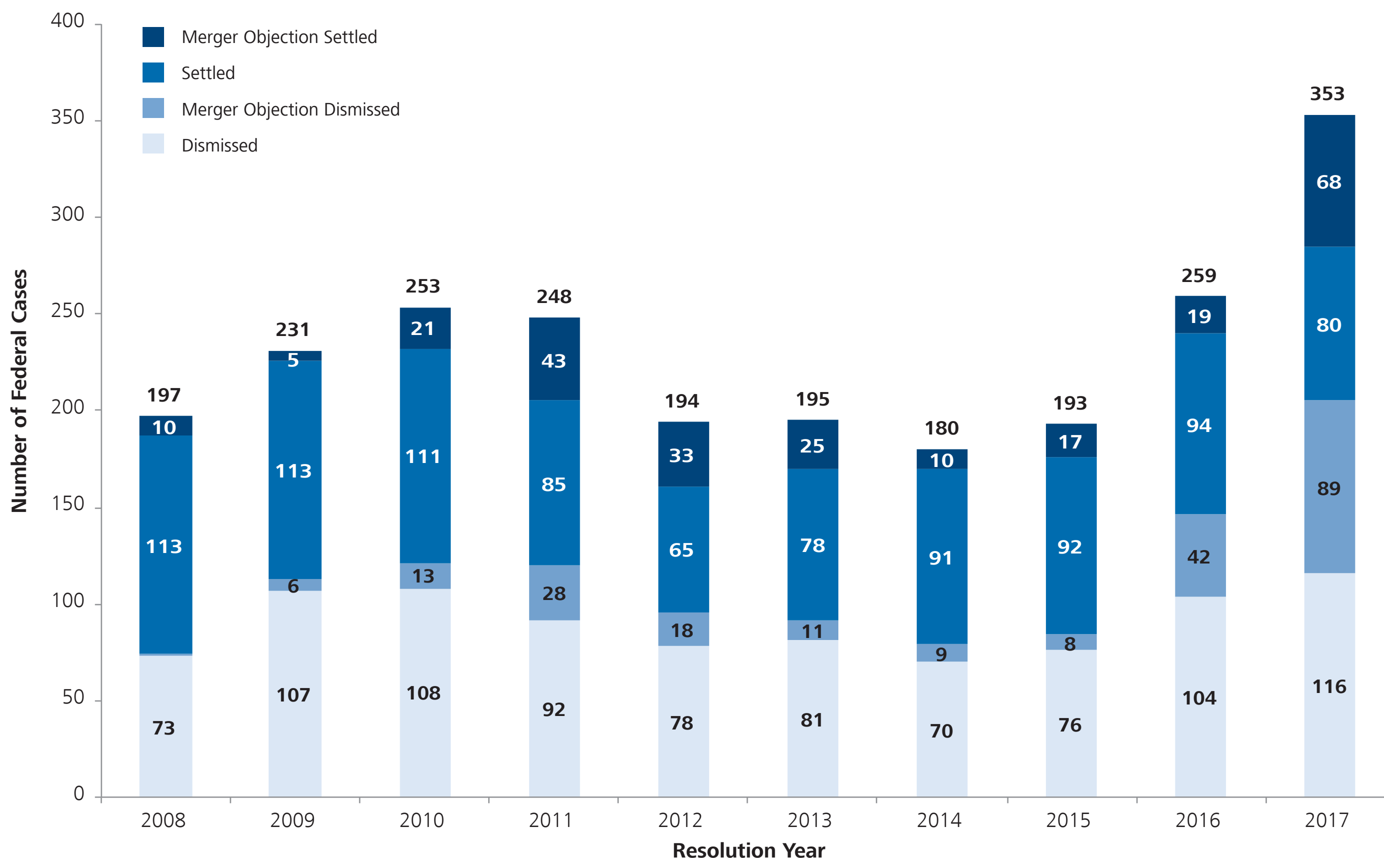
Number of Cases Settled or Dismissed

In 2017, 353 securities class actions were resolved, which is a post-PSLRA record high (see Figure 17). Of those, 148 cases settled, approaching the record 150 in 2007. The number of settlements was up by more than 30% over 2016, when 113 cases settled. A record 205 cases were dismissed in 2017, which marked the second consecutive year (and second year since the PSLRA became law) in which more cases were dismissed than settled. More than 40% of cases dismissed in 2017 were done so within a year of filing, the fastest pace since the passage of the PSLRA.

As with filings of securities class actions, case resolution statistics were affected by the surge in federal merger-objection cases. Merger objections made up 30% of all active cases during 2017, but constituted 43% of dismissals and 46% of settlements.[28] Moreover, of merger-objection cases dismissed in 2017, 89% were done so within one year of filing, compared with 29% for non-merger-objections cases.[29]

Beside merger-objection cases, most securities class actions in NERA's database allege violations of Rule 10b-5, Section 11, and/or Section 12, and are often regarded as "standard" securities class actions.[30] There were 116 dismissals of such cases in 2017, a record high. Contrasting with the record high number of dismissals, only 80 cases settled, near the 2012 record post-PSLRA low. In 2017, settlements of non-merger-objection cases constituted less than 41% of all case resolutions, a post-PSLRA low.

Figure 17. **Number of Resolved Cases: Dismissed or Settled**
January 2008–December 2017



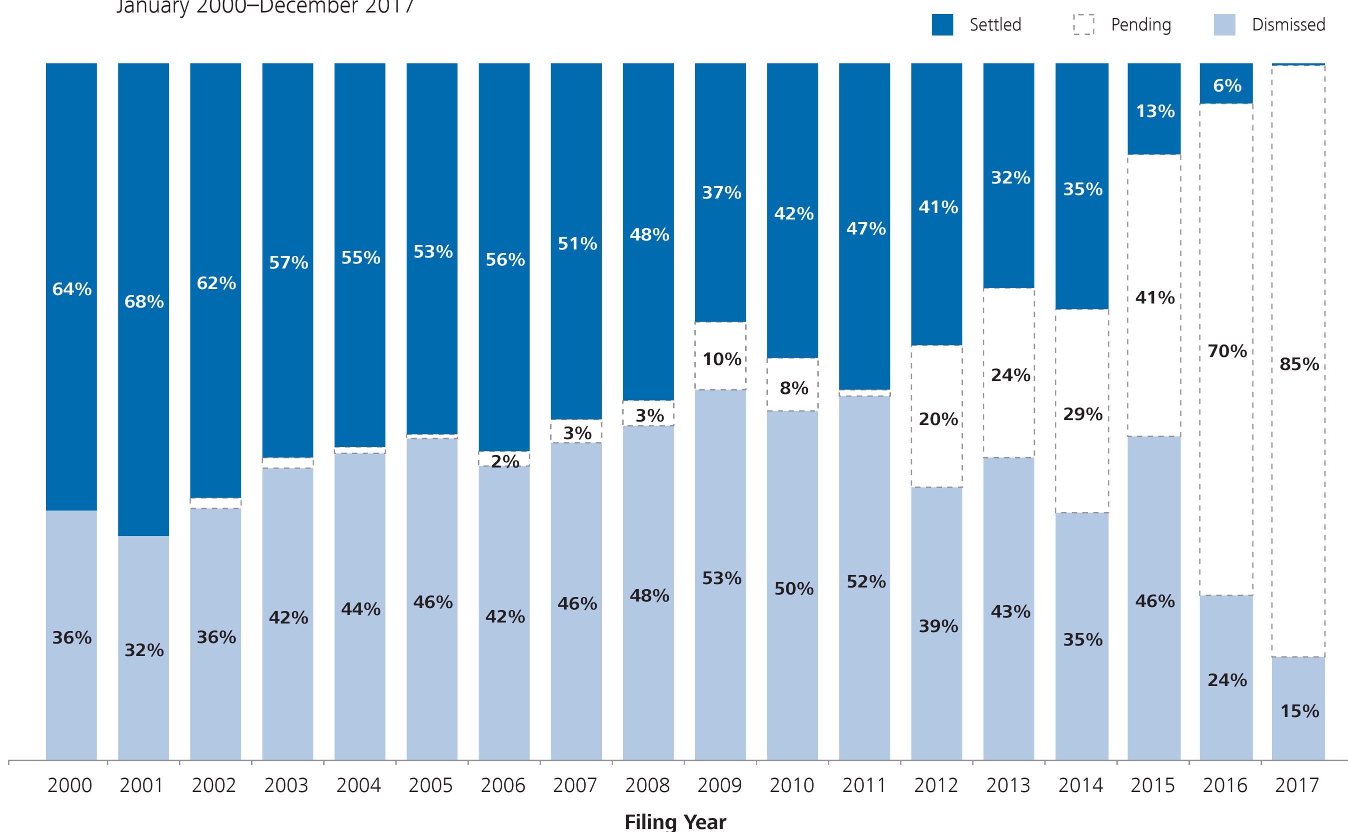
Case Status by Year

Figure 18 shows the current resolution status of cases by filing year. Each percentage in the figure represents the current resolution status of cases filed in each year as a proportion of all cases filed in that year. IPO laddering cases are excluded, as are merger-objection cases, and verdicts.

Historically, more cases settled than were dismissed. However, the rate of case dismissal has steadily increased. While only about a third of cases filed between 2000 and 2002 were dismissed, in 2011, the most recent year with substantial resolution data, about half of cases filed were dismissed.[31]

While dismissal rates have been climbing since 2000, at least until 2011, the ultimate dismissal rate for cases filed in more recent years is less certain. On one hand, it may increase further, as there are more pending cases awaiting resolution. On the other hand, it may decrease because recent dismissals have more potential than older ones to be appealed or re-filed, and cases that were recently dismissed without prejudice may ultimately result in settlements.

Figure 18. **Status of Cases as Percentage of Federal Filings by Filing Year**
Excluding Merger Objections and IPO Laddering Cases and Verdicts
January 2000–December 2017



Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

Number of Cases Pending

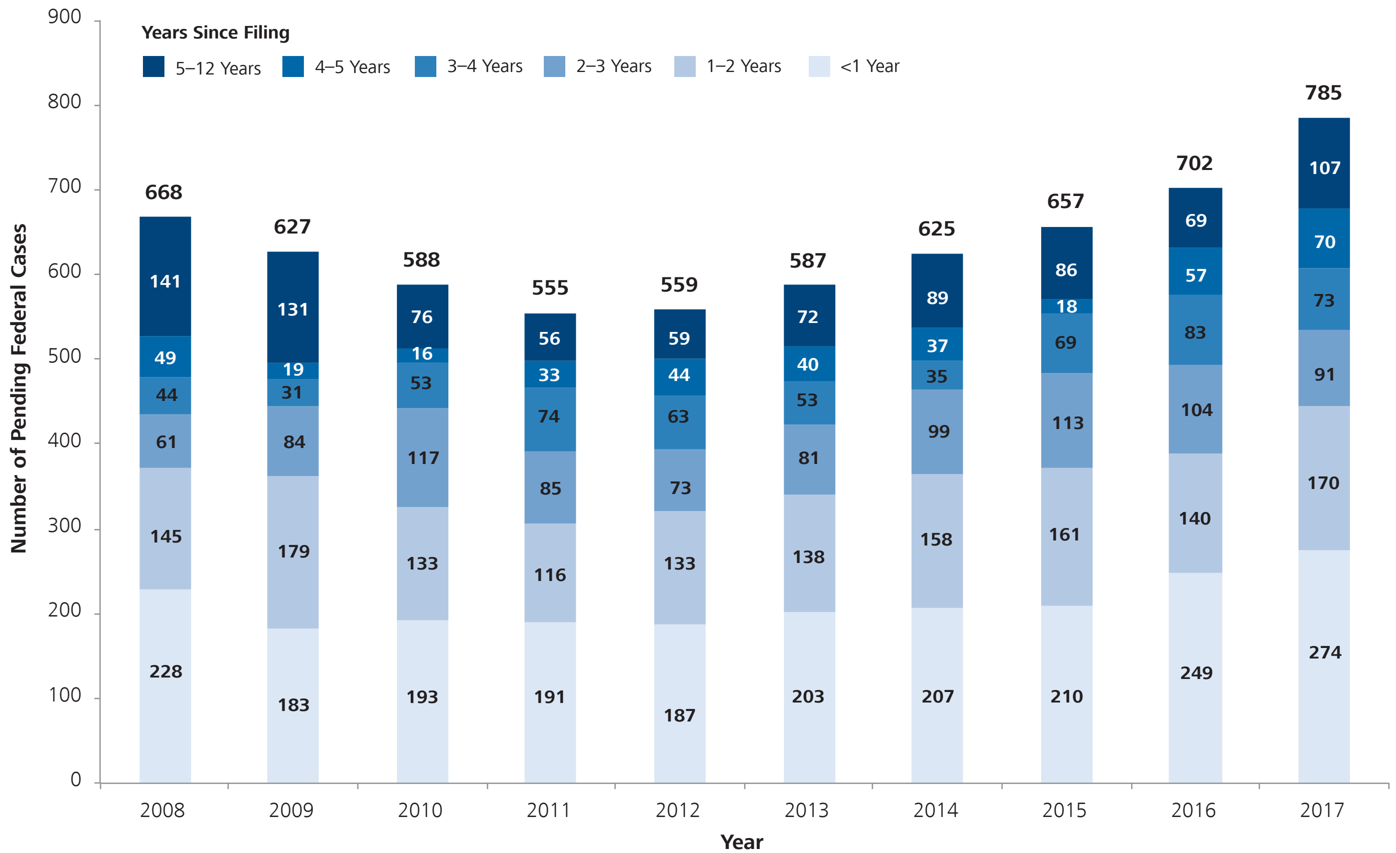
The number of securities class actions pending in the federal system has steadily increased from a post-PSLRA low of 555 in 2011 (see Figure 19).[32] Since then, pending case counts have increased every year (indeed at a faster rate in every year except 2015). In 2017, the number pending cases in the federal system increased to 785, up by 12% from 2016 and 41% from 2011.

Generally, since cases are either pending or resolved, a change in filing rate or a lengthening of the time to case resolution potentially contributes to changes in the number of cases pending. If the number of new filings is constant, the change in the number of pending cases can be indicative of whether the time to case resolution is generally shortening or lengthening.

The increase in pending cases in 2017 partially stemmed from a record number of recent filings, which was only partially offset by the record number of case resolutions. Approximately 20% of the growth in pending cases in 2017 is tied to new filings. In other words, despite the record number of cases filed in the past year also being resolved at a record rate, new filings are adversely affecting the pending case load.

The recent influx of merger-objection filings corresponded with considerable differences in the growth of pending cases between circuits. Growth in pending cases between 2015 (just before the *Trulia* decision) and 2017 was about 5.5 times higher in the four circuits with the most new merger-objection filings relative to historical filing rates, versus the four circuits with the fewest new merger-objection filings relative to historical filing rates. Overall, in 2016 and 2017, merger-objection filings in the Third, Fourth, Eighth, and Tenth Circuits exceeded the total number of all types of filings in those circuits in 2014 and 2015 by about 6.5%. This corresponded with a 41.9% increase in pending cases in those circuits. That contrasts with the Second, Fifth, Seventh, and Eleventh Circuits, where new merger objections in 2016 and 2017 were about 82.7% less than aggregate filings in 2014 and 2015. This corresponded with only about a 7.5% increase in pending cases in those circuits.[33] It remains to be seen whether the recent influx of merger-objection cases significantly slows processing of standard securities class actions.

Figure 19. **Number of Pending Federal Cases**
Excluding IPO Laddering Cases
January 2008–December 2017



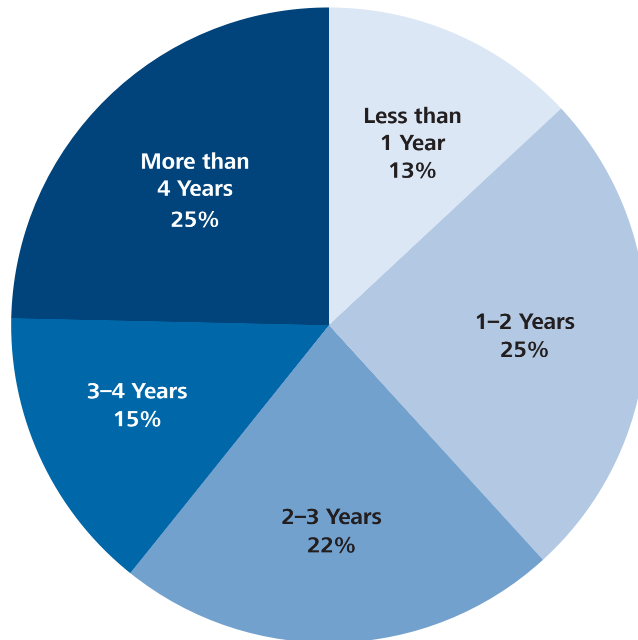
Note: Years since filing are year-end calculations. The figure excludes, in each year, cases that had been filed more than 12 years earlier, which ensures that all pending cases were filed post-PSLRA and that years are comparable.

Time to Resolution

The term "time to resolution" denotes the time between the filing of the first complaint and resolution (whether through settlement or dismissal). Figure 20 illustrates the time to resolution for all securities class actions filed between 2001 and 2013, and shows that about 38% of cases are resolved within two years of initial filing and about 60% are resolved within three years.[34]

The median time to resolution for cases filed in 2015 (the last year with sufficient resolution data) was 2.3 years, similar to the range observed over the preceding five years. Over the previous decade, the median time to resolution declined by more than 5%, primarily due to an increase in the dismissal rate (dismissals are generally resolved faster than settlements) and due to shorter time to settlement, as opposed to a shorter time to dismissal.

Figure 20. **Time from First Complaint Filing to Resolution**
Excludes Merger Objection and IPO Laddering Cases
Cases Filed January 2001–December 2013



Trends in Settlements

We present several settlement metrics to highlight attributes of cases that settled in 2017 and to compare them with cases settled in past years. We discuss two ways of measuring average settlement amounts and calculate the median settlement amount. Each calculation excludes IPO laddering cases, merger-objection cases, and cases that settle with no cash payment to the class, as settlements of such cases may obscure trends in what have historically been more typical cases.

Each of our three metrics indicates a decline in settlement values on an inflation-adjusted basis to lows not observed since the early 2000s. The recent drop is in sharp contrast with a steady increase in overall settlement values over the preceding two years. However, excluding settlements of over $1 billion, 2017 saw the second consecutive annual drop in the average settlement value. For the first time since 1998, no case settled for more than $250 million (without adjusting for inflation).

Record-low settlement metrics in 2017 do not necessarily indicate that cases were, on average, especially weak, as the aggregate size of settled cases in 2017 (indicated by aggregate NERA-defined Investor Losses) was the lowest since 2003. The trends in 2017 settlements do not necessarily portend low aggregate settlements in the future.[35] In fact, aggregate Investor Losses of pending cases, a factor that has historically been significantly correlated with settlement amounts, increased for the second consecutive year and currently exceed $900 billion.[36] Average Investor Losses of pending standard cases have also increased for the second consecutive year to $2.1 billion, but have fallen from a 10-year high of $3.8 billion in 2011.

To illustrate how many cases settled over various ranges in 2017 compared with prior years, we provide a distribution of settlements over the past five years. We also tabulated the 10 largest settlements of 2017.

Average and Median Settlement Amounts

In 2017, the average settlement amount fell to less than $25 million, a drop of about two-thirds compared with 2016, adjusted for inflation (see Figure 21). This contrasts with increases in year-over-year average settlements between 2014 and 2016. While infrequent large settlements are generally responsible for the wide variability in average settlement amounts over the past decade, in 2017 there was a dearth of even moderate settlements.

Figure 21. **Average Settlement Value ($Million)**
Excluding Merger-Objection Cases, IPO Laddering Cases, and Settlements for $0 Payment to the Class
January 2008–December 2017

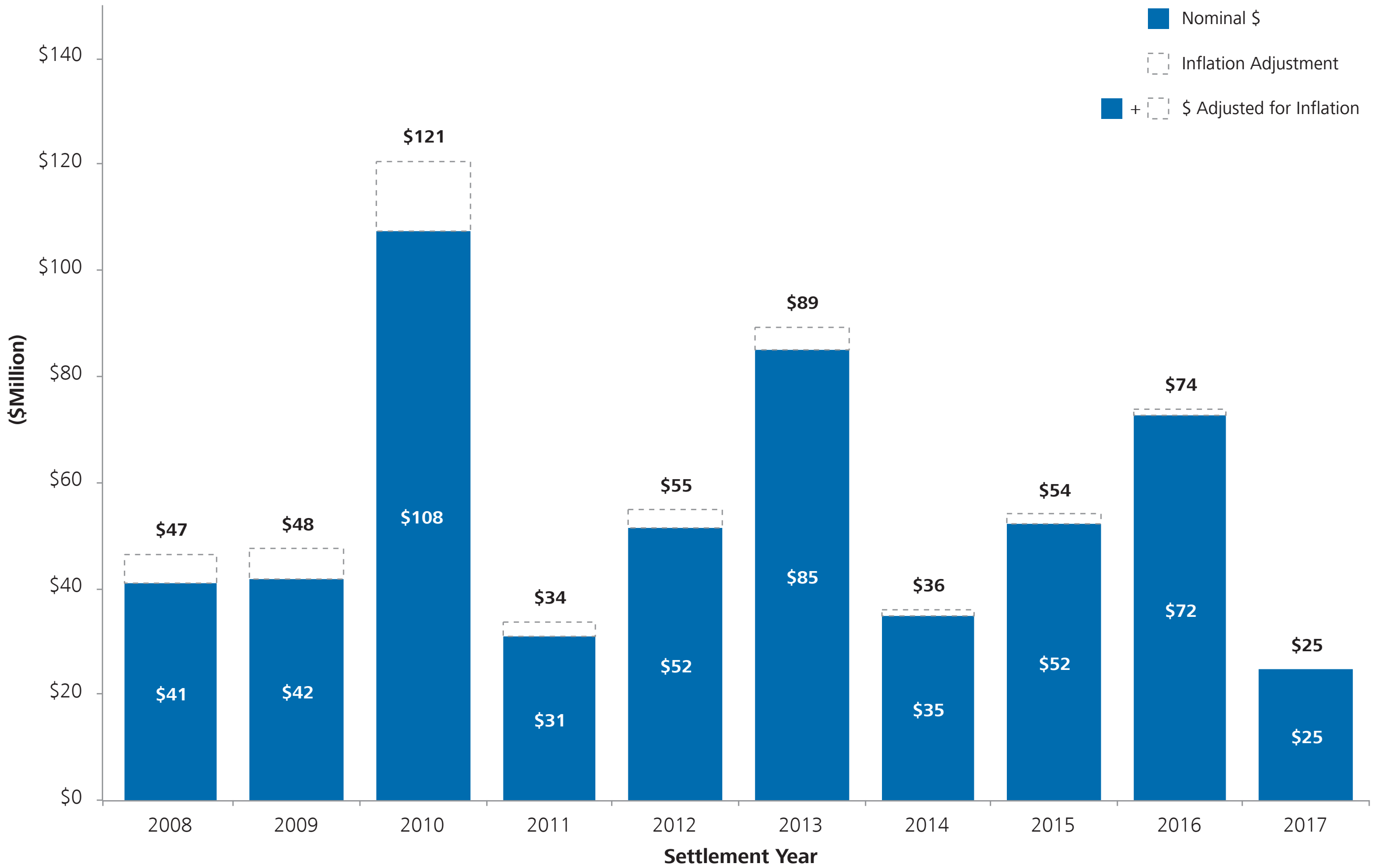
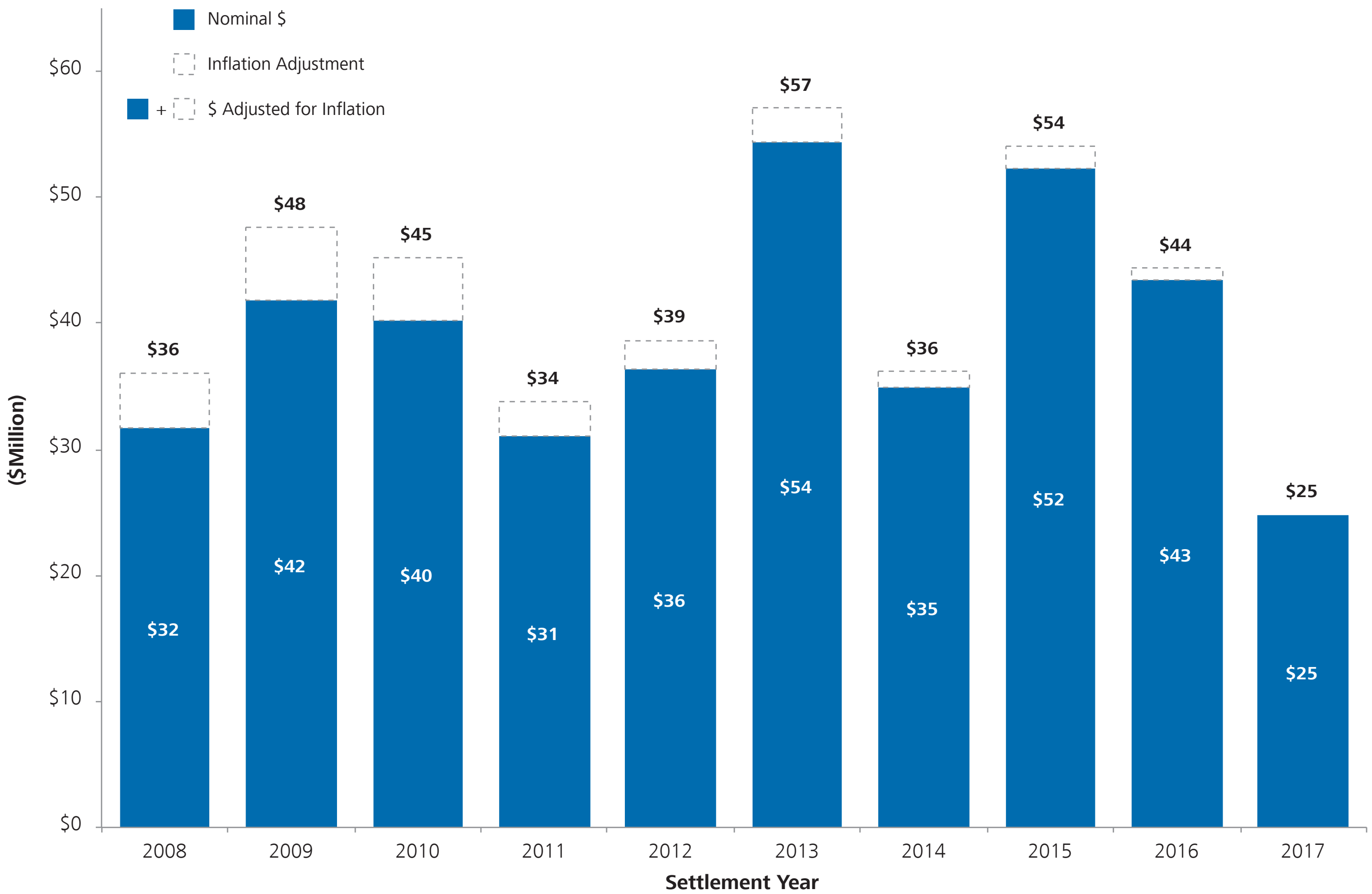


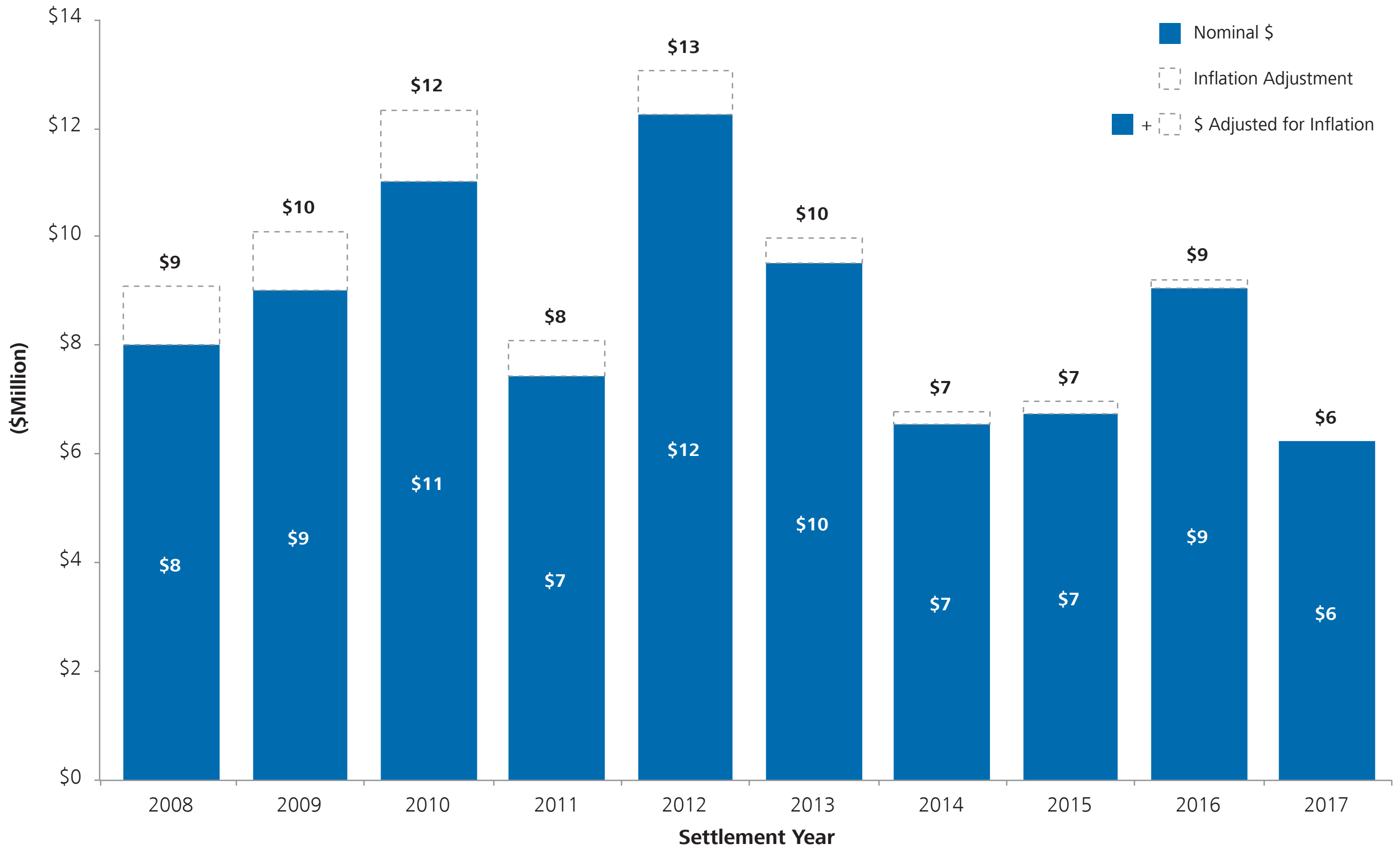
Figure 22 illustrates that, even excluding settlements over $1 billion, the $25 million average settlement in 2017 is more than 40% less than the comparable figure from 2016, and more than 25% less than the next lowest average settlement over the last decade (in 2011). Adjusted for inflation, the average settlement in 2017 was the lowest since 2001.

Figure 22. **Average Settlement Value ($Million)**
Excluding Settlements over $1 Billion, Merger-Objection Cases, IPO Laddering Cases, and Settlements for $0 Payment to the Class
January 2008–December 2017



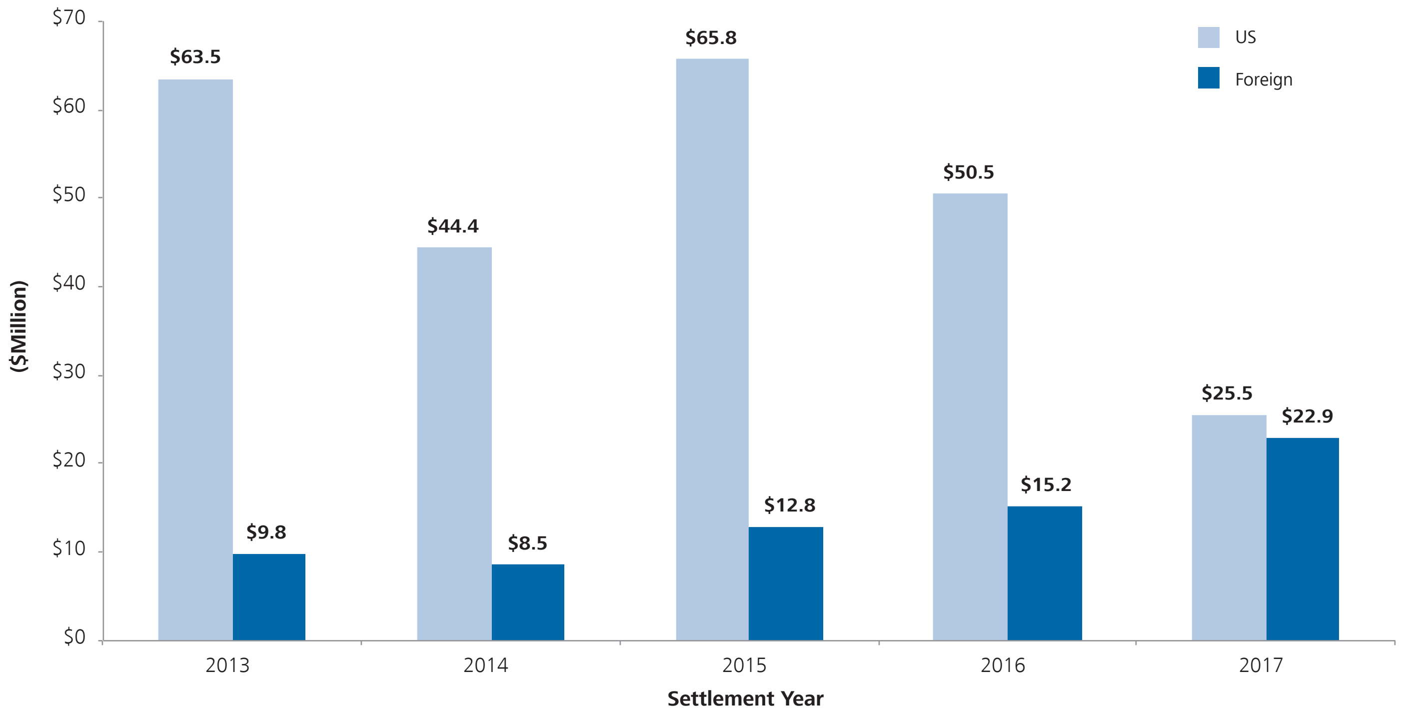
Despite the dramatic drop in 2017 average settlement metrics, over the longer term, settlement amounts have not declined as considerably across the board. The 2017 median settlement amount, or the amount that is larger than half of the settlement values over the year, is only moderately below the median settlement values in 2014 and 2015, even after adjusting for inflation (see Figure 23). Despite this, the median settlement in 2017 is the lowest since 2001.

Figure 23. **Median Settlement Value ($Million)**
Excluding Settlements over $1 Billion, Merger-Objection Cases, IPO Laddering Cases, and Settlements for $0 Payment to the Class
January 2008–December 2017



Securities class actions targeting foreign issuers settled for an average of $22.9 million in 2017, close to parity with settlements of cases against domestic issuers (see Figure 24). Contrasting with the slowdown in high and moderate settlements against domestic issuers, there were two relatively large settlements against foreign issuers in 2017. BP p.l.c. (2010) settled for $175 million, while Elan Corporation plc (2012) settled for $135 million, with both settlements among the top 10 settlements in 2017. Excluding these two cases, the 2017 average was $8.2 million.

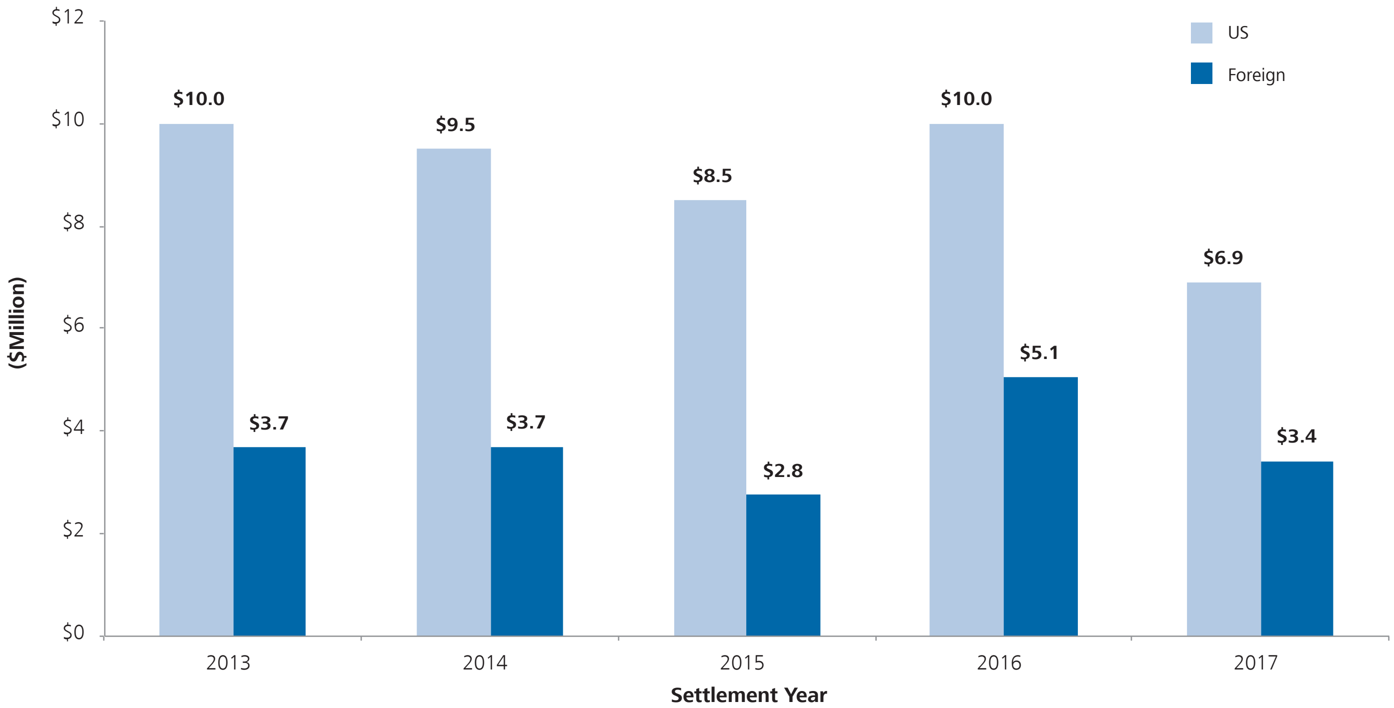
Figure 24. **Average Settlement Value—US vs. Foreign Companies ($Million)**
Excluding Settlements over $1 Billion, Merger-Objection Cases, and Settlements for $0 Payment to the Class
January 2013–December 2017



Note: Foreign company status based on country of principal executive offices.

In 2017, the median settlement of securities class actions targeting foreign issuers was $3.4 million, in line with prior years. Securities class actions against foreign issuers are generally smaller, as measured by NERA-defined Investor Losses. Cases targeting firms located in China also tend to settle for less than comparable cases against domestic firms.

Figure 25. **Median Settlement Value—US vs. Foreign Companies ($Million)**
Excluding Settlements over $1 Billion, Merger-Objection Cases, and Settlements for $0 Payment to the Class
January 2013–December 2017

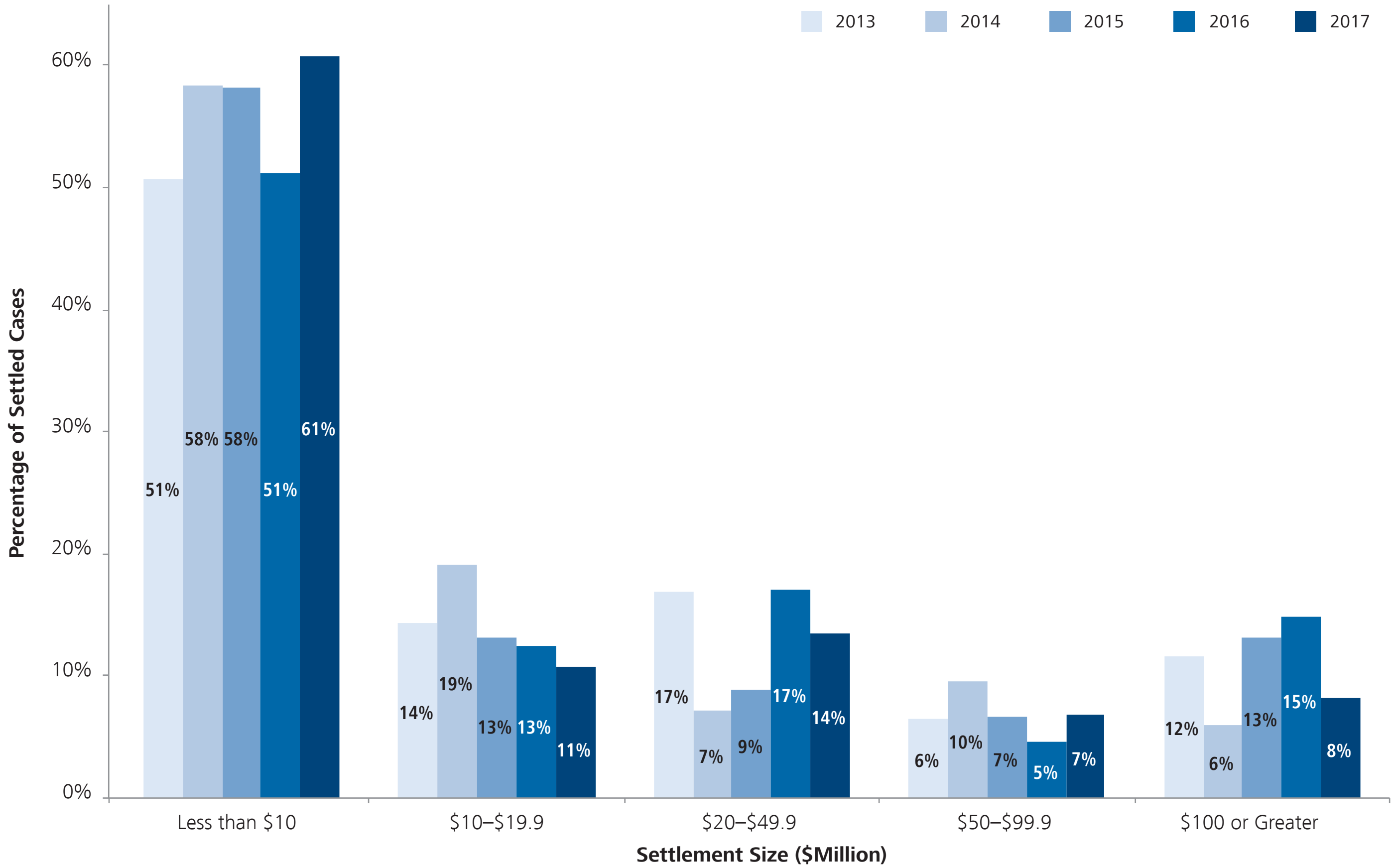


Note: Foreign company status based on country of principal executive offices.

Distribution of Settlement Amounts

In 2017, a dearth of moderate and large settlements resulted in a higher proportion of cases that settled for amounts less than $10 million (see Figure 26). This reversed a persistent trend between 2014 and 2016 toward a higher proportion of settlements that exceeded $20 million. As such, in 2017 the distribution of settlements dramatically skewed toward the lower end of the range.

Figure 26. **Distribution of Settlement Values**
Excluding Merger-Objection Cases and Settlements for $0 Payment to the Class
January 2013–December 2017



The 10 Largest Settlements of Securities Class Actions of 2017

The 10 largest securities class action settlements of 2017 are shown in Table 1. Three of the 10 largest settlements involved defendants in the Health Technology and Services Sector. This contrasts with the preceding two years, in which the majority of large settlements involved financial sector defendants. Overall, these 10 cases accounted for more about $1.2 billion out of about $1.8 billion in aggregate settlements (67%) over the period. The largest settlement, which involved Salix Pharmaceuticals, Ltd., was for $210 million, making up about 11% of total dollars spent on settlements during the year.

Table 1. **Top 10 2017 Securities Class Action Settlements**

Ranking	Case Name	Total Settlement Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses Value ($Million)
1	Salix Pharmaceuticals, Ltd.	$210.0	$48.7
2	BP p.l.c. (2010)	$175.0	$24.3
3	NovaStar Mortgage Funding Trusts	$165.0[1]	$49.7
4	Clovis Oncology, Inc. (2015)	$142.0	$32.9
5	Elan Corporation, plc (2012)	$135.0	$29.5
6	Halliburton Company	$100.0	$40.8
7	J. C. Penney Company, Inc.	$97.5	$33.5
8	Dole Food Company, Inc. (2015)	$74.0	$19.1
9	Rayonier Inc.	$73.0	$25.4
10	Ocwen Financial Corporation	$56.0	$17.3
	Total	**$1,227.5**	**$321.2**

Note:

[1] The settlement was preliminarily approved on 9 May 2017. The final hearing was originally scheduled for 13 September 2017 and later rescheduled for 20 September 2017, but did not occur due to an appeal. At the time of this report's publication, the appeal was pending before the Second Circuit.

These settlements pale in comparison to the largest settlements since passage of the PSLRA. Enron Corp. settled for more than $7.2 billion in aggregate, while Bank of America Corp. settled for more than $2.4 billion in 2013, making it the largest Finance Sector settlement ever (see Table 2).

Table 2. **Top 10 Securities Class Action Settlements**
As of 31 December 2017

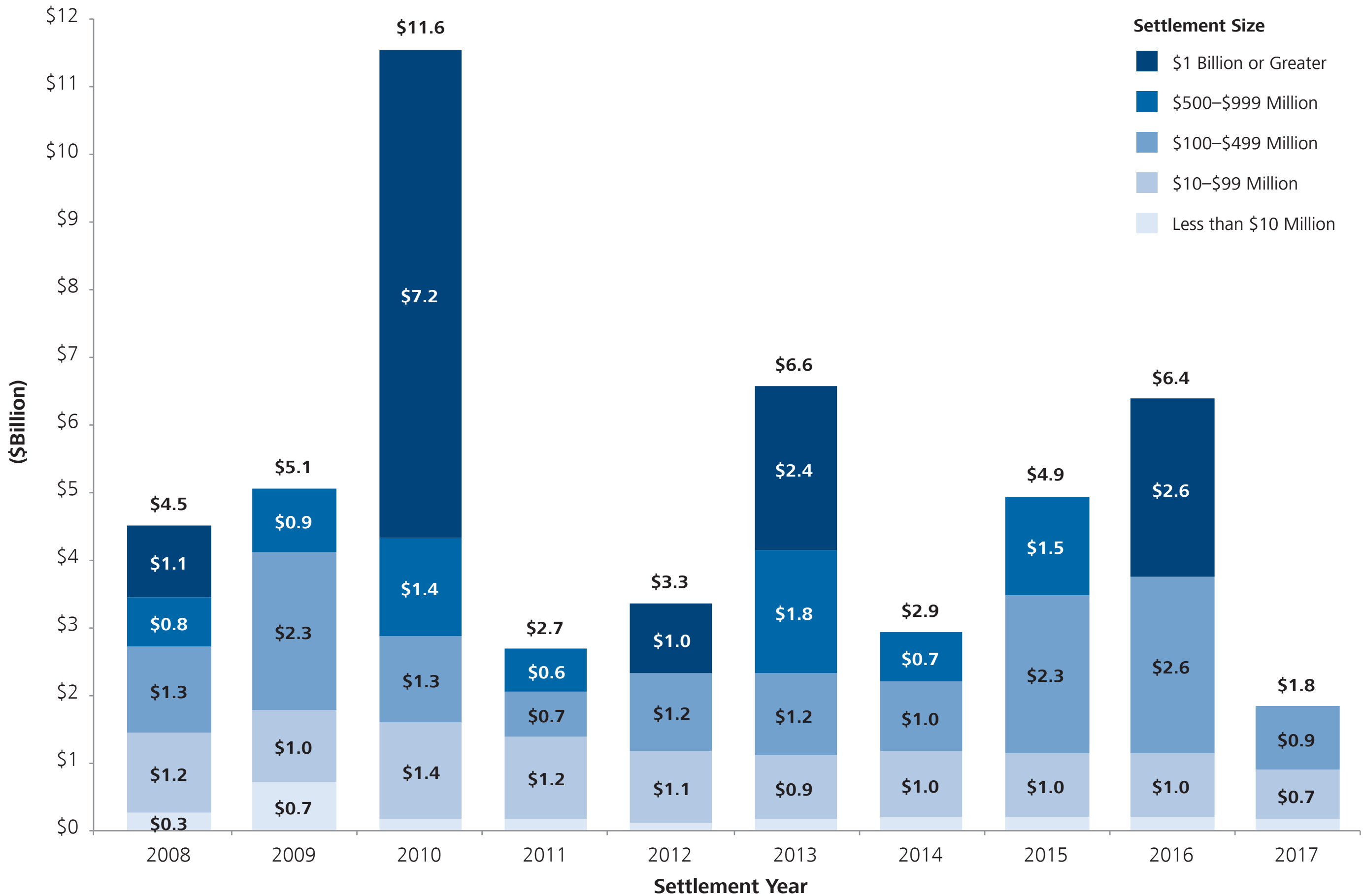
				Codefendant Settlements		
Ranking	Defendant	Settlement Year(s)	Total Settlement Value ($Million)	Financial Institutions Value ($Million)	Accounting Firms Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses Value ($Million)
1	ENRON Corp.	2003–2010	$7,242	$6,903	$73	$798
2	WorldCom, Inc.	2004–2005	$6,196	$6,004	$103	$530
3	Cendant Corp.	2000	$3,692	$342	$467	$324
4	Tyco International, Ltd.	2007	$3,200	No codefendant	$225	$493
5	AOL Time Warner Inc.	2006	$2,650	No codefendant	$100	$151
6	Bank of America Corp.	2013	$2,425	No codefendant	No codefendant	$177
7	Household International, Inc.	2006–2016	$1,577	$0	Dismissed	$427
8	Nortel Networks (I)	2006	$1,143	No codefendant	$0	$94
9	Royal Ahold, NV	2006	$1,100	$0	$0	$170
10	Nortel Networks (II)	2006	$1,074	No codefendant	$0	$89
	Total		**$30,298**	**$13,249**	**$967**	**$3,252**

Aggregate Settlements

We use the term "aggregate settlements" to denote the total amount of money to be paid to settle litigation by (non-dismissed) defendants based on court-approved settlements during a year.

Aggregate settlements were about $1.8 billion in 2017, a drop of more than 70% to a level not seen since 2001 (see Figure 27). This dramatic decline reflects both a drop in the number of standard case settlements in 2017 and the near-record low overall average settlement value.

Figure 27. **Aggregate Settlement Value by Settlement Size ($Billion)**
January 2008–December 2017



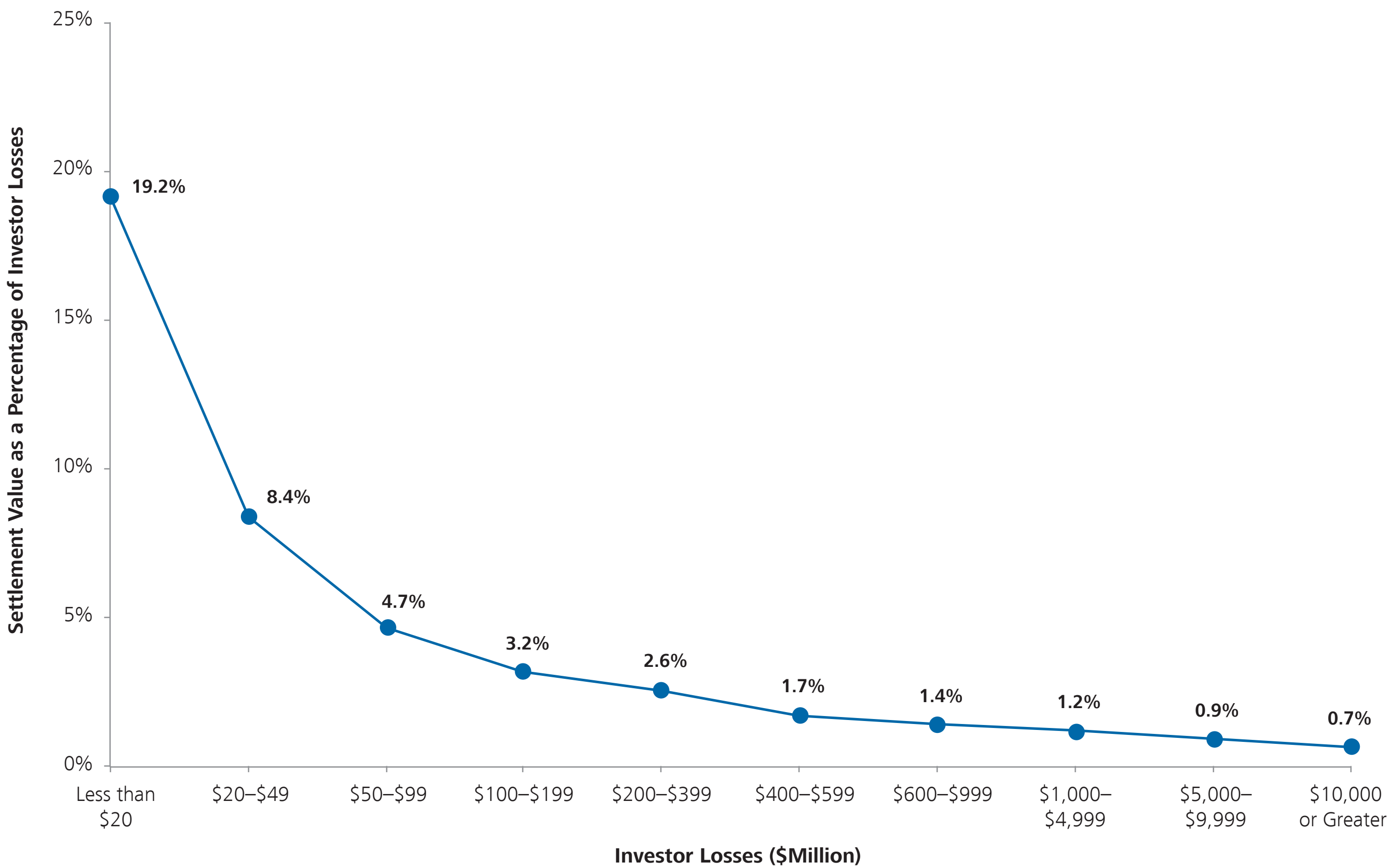
NERA-Defined Investor Losses vs. Settlements

As noted above, our proxy for case size, NERA-defined Investor Losses, is a measure of the aggregate amount that investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as NERA-defined Investor Losses grow, but the relationship is not linear. Based on our analysis of data from 1996 to 2017, settlement size grows less than proportionately with Investor Losses. In particular, small cases typically settle for a higher fraction of Investor Losses (i.e., more cents on the dollar) than larger cases. For example, the median ratio of settlement to Investor Loss was 19.2% for cases with Investor Losses of less than $20 million, while it was 0.7% for cases with Investor Losses over $10 billion (see Figure 28).

Our findings regarding the ratio of settlement amount to NERA-defined Investor Losses should not be interpreted as the share of damages recovered in settlement but rather as the recovery compared to a rough measure of the "size" of the case. Notably, the percentages given here apply *only* to NERA-defined Investor Losses. Use of a different definition of investor losses would result in a different ratio. Also, the use of the ratio alone to forecast the likely settlement amount would be inferior to a proper all-encompassing analysis of the various characteristics shown to impact settlement amounts, as discussed in the next section.

Figure 28. **Median of Settlement Value as a Percentage of NERA-Defined Investor Losses by Level of Investor Losses**
Excluding Settlements for $0 Payment to the Class
January 1996–December 2017

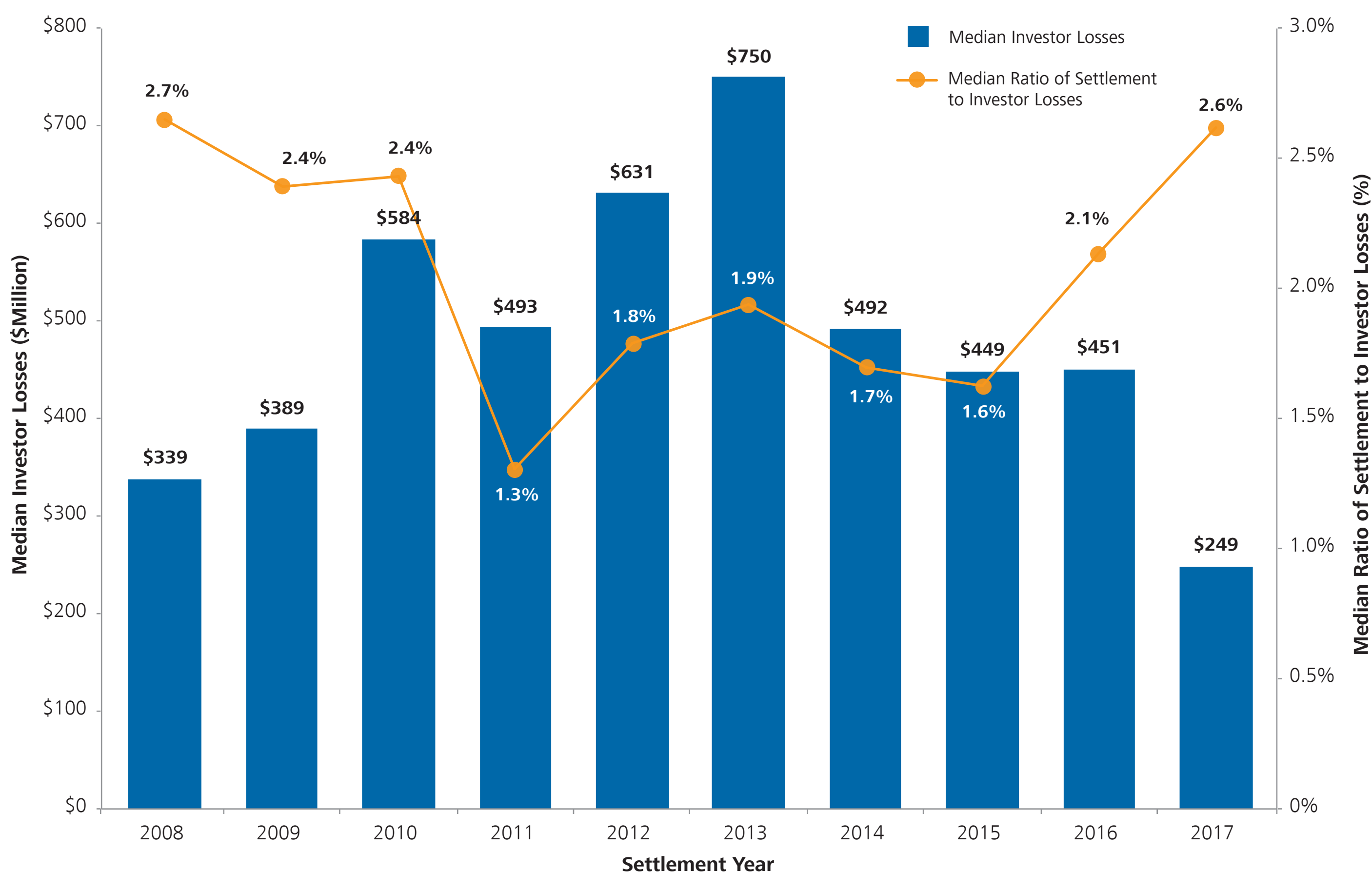


Median NERA-Defined Investor Losses over Time

Prior to 2014, median NERA-defined Investor Losses for settled cases had been on an upward trajectory since the passage of the PSLRA. As described above, the median ratio of settlement size to Investor Losses generally decreases as Investor Losses increase. Over time, the increase in median Investor Losses coincided with a decreasing trend in the median ratio of settlement to Investor Losses. Of course, there are year-to-year fluctuations.

As shown in Figure 29, the median ratio of settlements to NERA-defined Investor Losses was 2.6% in 2017. This was the second consecutive yearly increase and at least a short-term reversal of a long-term downtrend of the ratio between passage of the PSLRA and 2015. The increase in the median settlement ratio is to be expected given relatively few settlements of large and moderately-sized cases.

Figure 29. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
January 2008–December 2017



Explaining Settlement Amounts

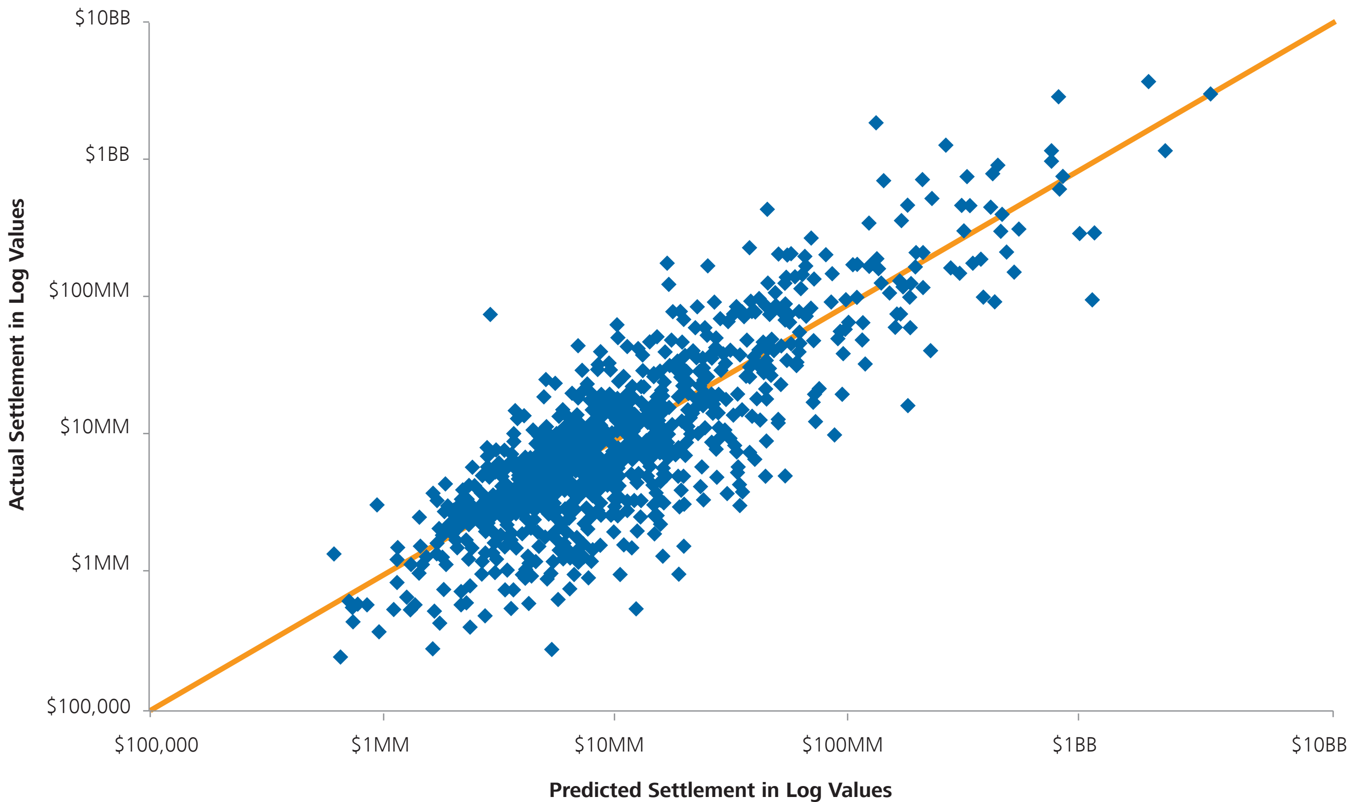
The historical relationship between case attributes and other case- and industry-specific factors can be used to measure the factors that are correlated with settlement amounts. NERA has examined settlements in more than 1,000 securities class actions and identified key drivers of settlement amounts, many of which have been summarized in this report.

Generally, we find that the following factors have historically been significantly correlated with settlement amounts:

- NERA-defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer;
- Types of securities alleged to have been affected by the fraud;
- Variables that serve as a proxy for the "merit" of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- Admitted accounting irregularities or restated financial statements;
- The existence of a parallel derivative litigation; and
- An institution or public pension fund as lead plaintiff.

Together, these characteristics and others explain most of the variation in settlement amounts, as illustrated in Figure 30.[37]

Figure 30. **Predicted vs. Actual Settlements**

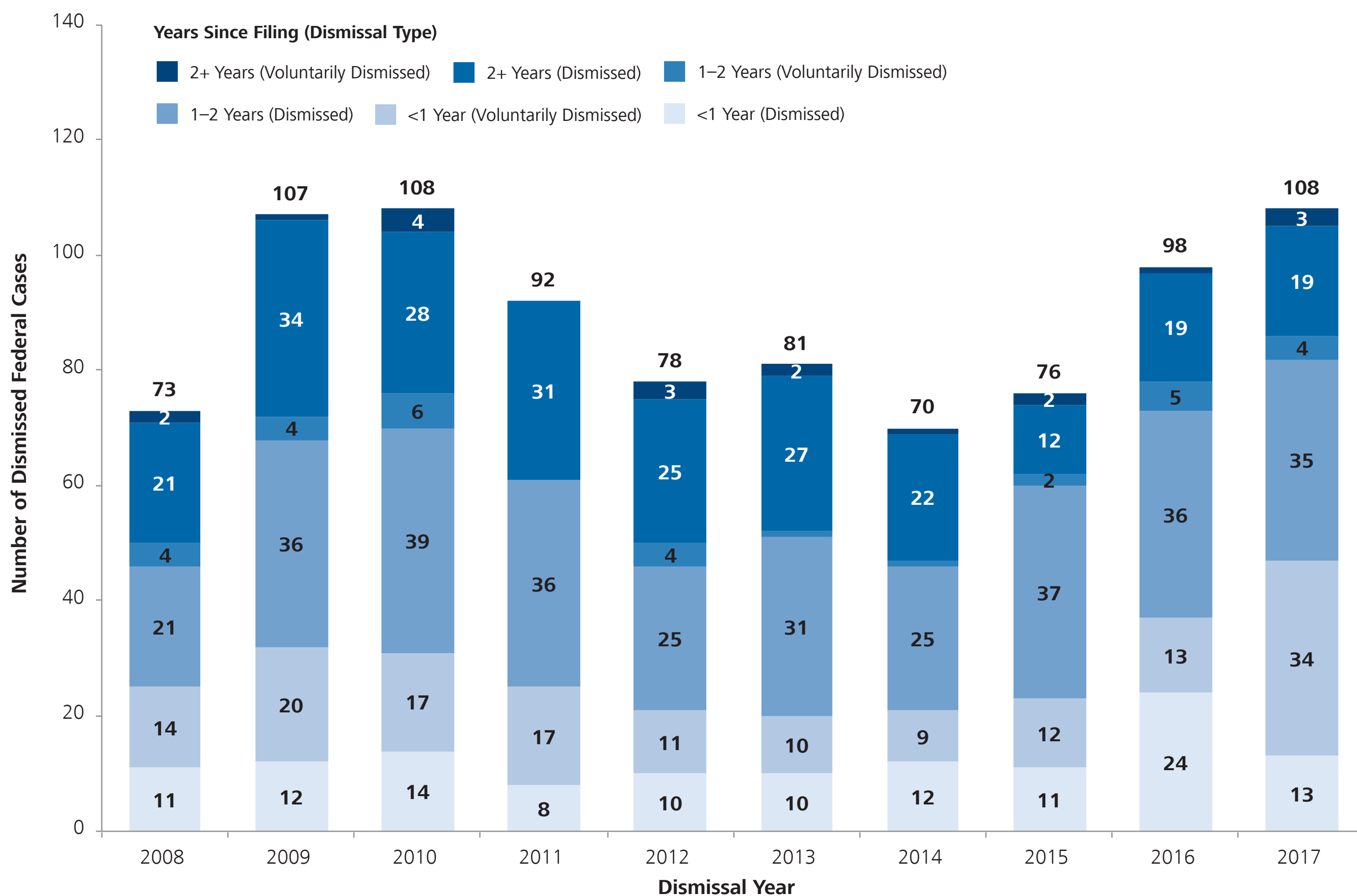


Trends in Dismissals

In 2017, the number of dismissals (excluding merger objections) matched the high of 108 over the last decade (see Figure 31). This was largely due to a substantial increase in voluntary dismissals, which more than doubled.[38] In particular, the number of voluntary dismissals without prejudice increased from two in 2016 to 32 in 2017. Out of all voluntary dismissals in 2017, 83% occurred within one year of filing, the highest rate in 10 years and well above the five-year average of 73%.

Generally, most voluntary dismissals occur within a year of filing, and the increase in 2017 can partially be attributed to more cases being filed. More filings also occurred in the first quarter of 2017, providing a longer dismissal window. However, filings of standard securities class actions grew at a slower rate in 2017 than in 2011, and growth was only somewhat faster than in 2013. Despite that, the number of voluntary dismissals within one year of filing was unchanged in 2011 and fell in each year between 2012 and 2014.

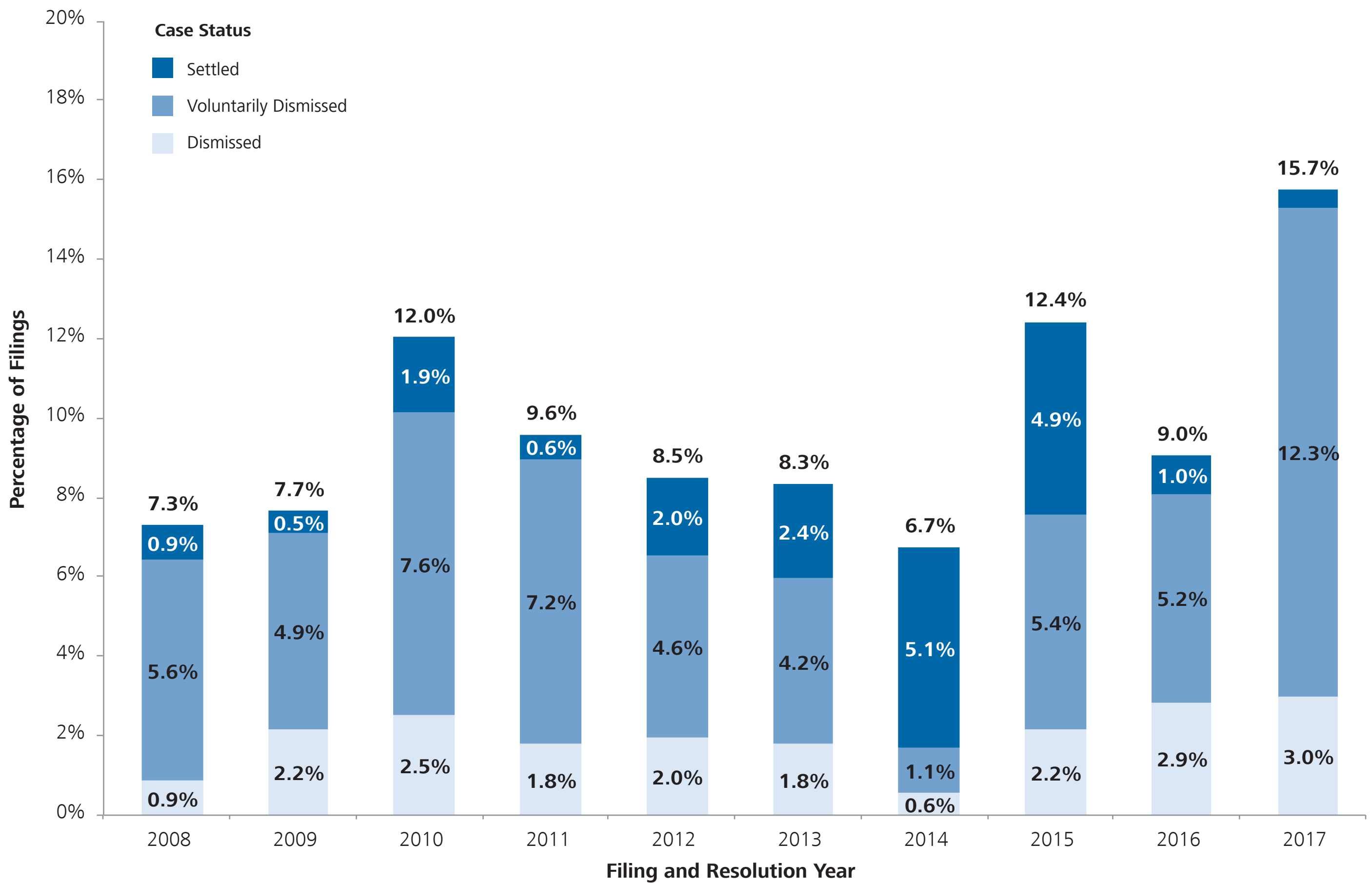
Figure 31. **Number of Dismissed Cases by Case Age**
Excluding Merger Objections
January 2008–December 2017



In 2017, 15.7% of standard cases were filed and resolved within the same calendar year, which was the highest rate in at least a decade (see Figure 32). By the end of the year, 12% of cases were voluntarily dismissed, of which the vast majority were voluntary dismissals without prejudice. This may indicate that certain securities cases filed in 2017 were particularly weak, perhaps a result of plaintiffs' managing a more diverse portfolio of casework. Alternatively, the dramatic increase in such dismissals may be driven by plaintiff forum selection.[39]

The rate of voluntary dismissals was not particularly concentrated in terms of jurisdiction or the specific allegations we track.

Figure 32. **Year-End Status of Class Actions Filed and Resolved Within Each Calendar Year**
Excluding Merger Objections
January 2008–December 2017



Trends in Attorneys' Fees

Plaintiffs' Attorneys' Fees and Expenses

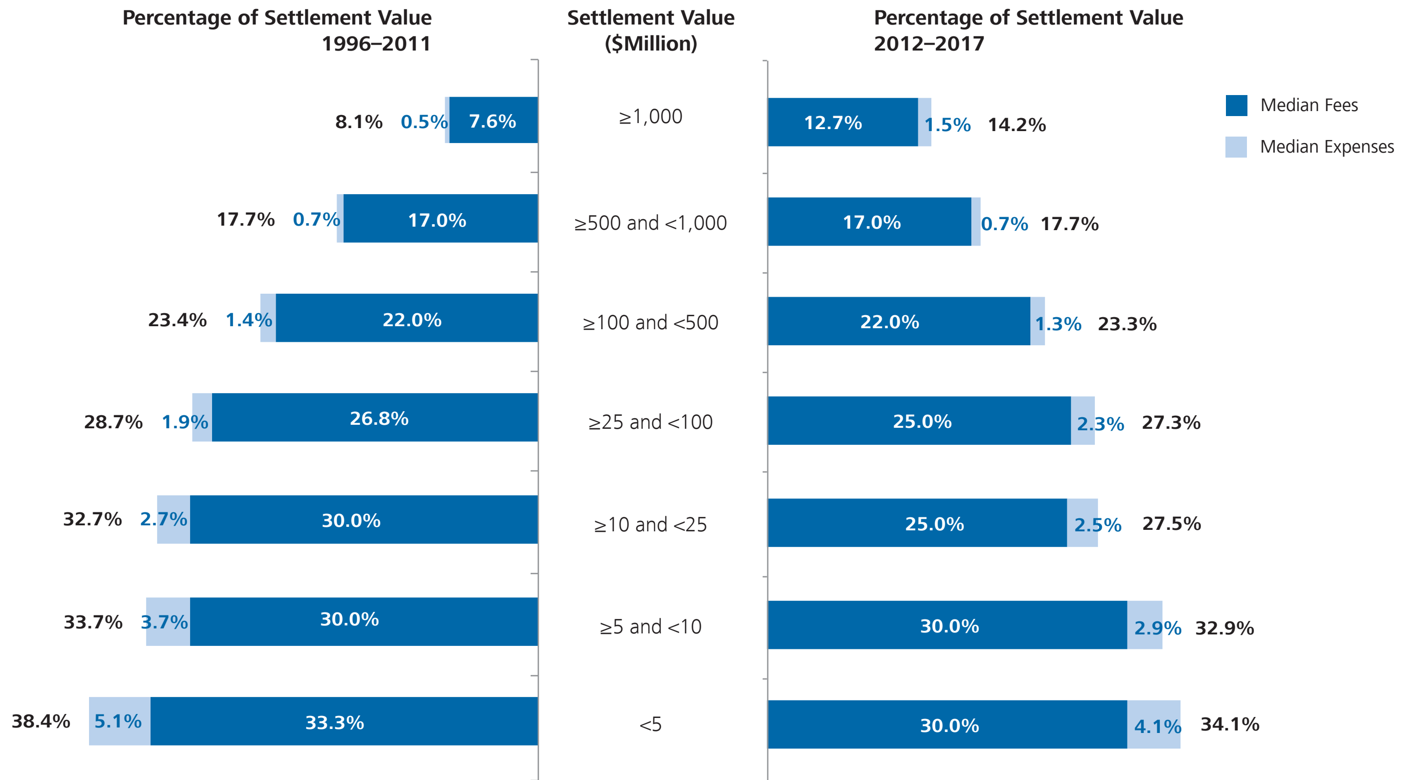
Usually, plaintiffs' attorneys' remuneration is determined as a fraction of any settlement amount in the form of fees, plus expenses. Figure 33 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values over ranges of settlement amounts. The data in the figure exclude settlements of merger-objection cases and cases with no cash payment to the class.

A strong pattern is evident in Figure 33: typically, fees grow with settlement size, but less than proportionally (i.e., the fee percentage shrinks as the settlement size grows).

To illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and reported the median fee percentage for each group. While fees are stable at around 30% of settlement values for settlements below $10 million, this percentage declines as settlement size increases.

We also observe that fee percentages have been decreasing over time, except for fees awarded on very large settlements. For settlements above $1 billion, fee rates have increased.

Figure 33. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excluding Merger-Objection Cases and Settlements for $0 Payment to the Class



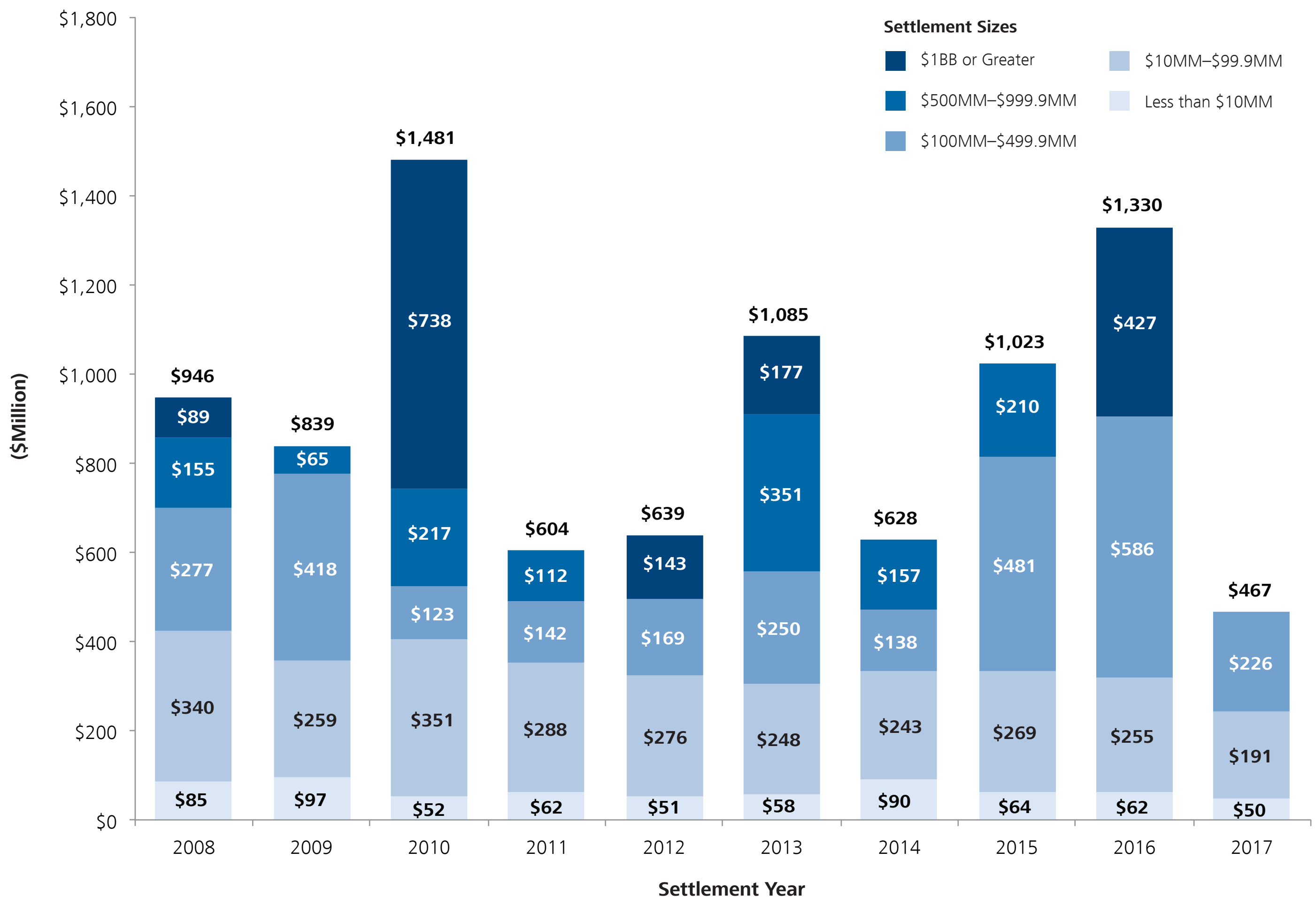
Aggregate Plaintiffs' Attorneys' Fees and Expenses

Aggregate plaintiffs' attorneys' fees and expenses are the sum of all fees and expenses received by plaintiffs' attorneys for all securities class actions that receive judicial approval in a given year.

In 2017, aggregate plaintiffs' attorneys' fees and expenses were $467 million, a drop of about 65% to a level not seen since 2004 (see Figure 34). This decrease in fee amounts partially reflects the trend toward fewer and smaller settlements. However, the drop in aggregate plaintiffs' attorneys' fees is still less than the 70%+ drop in aggregate settlements, as most cases that settled were smaller, and smaller cases typically have higher fee payout ratios.

Note that this figure differs from the other figures in this section, because the aggregate includes fees and expenses that plaintiffs' attorneys receive for settlements in which no cash payment was made to the class.

Figure 34. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size ($Million)**
January 2008–December 2017



Notes

[1] This edition of NERA's report on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, Dr. Renzo Comolli, the late Dr. Frederick C. Dunbar, Dr. Vinita M. Juneja, Sukaina Klein, Dr. Denise Neumann Martin, Dr. Jordan Milev, Dr. John Montgomery, Robert Patton, Dr. Stephanie Plancich, and others. The authors also thank Dr. Milev and Benjamin Seggerson for helpful comments on this edition. In addition, we thank Edward Flores and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this paper; all errors and omissions are ours.

[2] Data for this report have been collected from multiple sources, including Institutional Shareholder Services, Inc., complaints, case dockets, Dow Jones, Bloomberg L.P., FactSet Research Systems Inc., the US Securities and Exchange Commission (SEC) filings, and public press reports.

[3] Craig Doidge, G. Andrew Karolyi, and René M. Stulz, "The U.S. Listing Gap," National Bureau of Economic Research Working Paper No. 21181, May 2015.

[4] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[5] Despite a 13% year-over-year drop in US M&A deals in 2016, merger-objection suits doubled from 2015 levels (see "Global M&A Review: Full Year 2016 Final Results," Dealogic, January 2017.) The doubling of merger-objection filings again in 2017 far exceeded the 18% increase in deals over the first nine months of 2017 (see "Global M&A Review 3Q 2017," Thomson Reuters, October 2017).

[6] 2010 deal growth and litigation rates obtained from M. D. Cain and S. D. Solomon, "A Great Game: The Dynamics of State Competition and Litigation," *Iowa Law Review*, Vol. 100, No. 165, 2015, Table 1. 2016 M&A activity growth obtained from "Global M&A Review: Full Year 2016 Final Results," Dealogic, January 2017. 2017 deal activity obtained from "Global M&A Review 3Q 2017," Thomson Reuters, October 2017.

[7] M. D. Cain and S. D. Solomon, "A Great Game: The Dynamics of State Competition and Litigation," *Iowa Law Review*, Vol. 100, No. 165, 2015.

[8] M. D. Cain and S. D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law Business and the Economy, 14 January 2016. Alison Frankel, "Forum Selection Clauses Are Killing Multiforum M&A litigation," *Reuters*, 24 June 2014.

[9] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016), n. 36.

[10] M. D. Cain and S. D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law Business and the Economy, 14 January 2016.

[11] Warren S. de Wied, "Delaware Forum Selection Bylaws After Trulia," Harvard Law School Forum on Corporate Governance and Financial Regulation, 25 February 2016.

[12] *In re: Walgreen Co. Stockholder Litigation*, No. 15-3799 (7th Cir. Aug. 10, 2016).

[13] *Jones v. WSB Holdings, Inc.*, No. CAL-1231262 (Md. Cir. Ct. Nov. 12, 2013).

[14] Federal securities class actions that allege violations of Rule 10b-5, Section 11, and/or Section 12 have historically dominated federal securities class action dockets and are often referred to as "standard" cases.

[15] Robert Patton, "Recent Trends in US Securities Class Actions against Non-US Companies," NERA Working Paper, 24 October 2012.

[16] Kane Wu, "U.S.-Listed China Firms Hurry Homeward," *The Wall Street Journal*, 17 November 2015.

[17] Andrew Bolger, "Warning signs appear after bumper IPO year," *Financial Times*, 26 December 2014.

[18] "U.S. Tech IPO Market Sucked Less In 2017, But Still Managed To Disappoint," *VentureBeat*, 18 December 2017.

[19] "Why Section 11 Class Actions Are Proliferating In Calif.," *Law360*, 27 April 2015.

[20] Examples of such forum selection include those used by Blue Apron Holdings (see Blue Apron Holdings, Inc. SEC Form 8-K, filed 5 July 2017), MongoDB (see MongoDB, Inc. SEC Form 8-K, filed 25 October 2017), Restoration Robotics (See Restoration Robotics Inc. SEC Form 8-K, filed 17 October 2017), Roku (see Roku, Inc. SEC Form S-1/A, filed 18 September 2017), and Snap (see Snap, Inc. SEC Form S-1, filed 2 February 2017).

[21] *Cyan, Inc. v. Beaver County Employees Retirement Fund*, Supreme Court No. 15-1439.

[22] In 2016, several pharmaceutical companies were caught up in a long-running US Department of Justice (DOJ) probe into alleged generic drug price collusion (see Andrew Bolger, "U.S. Charges in Generic-Drug Probe to Be Filed by Year-End," *Bloomberg Markets*, 3 November 2016). In September 2016, a leading poultry distributor sued several poultry producers, alleging price fixing of broiler chickens (see Eric Kroh, "Poultry Producers Hit With Chicken Price Antitrust Suit," *Law360*, 3 September 2016).

[23] 13% of firms in the Third Circuit are in the Pharmaceutical Preparations industry (SIC code 2834), compared with 8% of publicly traded firms. These are mostly incorporated in New Jersey.

[24] *In re: Walgreen Co. Stockholder Litigation*, No. 15-3799 (7th Cir. Aug. 10, 2016).

[25] In 2016, several pharmaceutical companies were targeted in a long-running DOJ probe and a leading poultry distributor sued several poultry producers, alleging price fixing. See endnote 22 for details and sources.

[26] This case was filed after the SEC filed a complaint, more than four years after the end of the proposed class period. The plaintiffs in the class action stated that the SEC complaint first revealed the alleged fraud.

[27] Outcomes of the motions for summary judgment are available from NERA but not shown in this report.

[28] *Active cases* equals the sum of pending cases at the beginning of 2017 plus those filed during the year.

[29] In 2016, 84% of dismissed merger-objection cases were dismissed within one year of filing. Prior to 2016, a period completely before the *Trulia* decision, about 66% of such cases were dismissed within a year of filing.

[30] In addition to merger objections and standard securities class actions, our database includes a small number of "other" cases (see Figure 3).

[31] Nearly 90% of cases filed before 2012 have been resolved, providing evidence of longer-term trends about dismissal and settlement rates. Data since then is inconclusive given pending litigation.

[32] We only consider pending litigation filed after the passage of the PSLRA in 1995.

[33] The D.C. Circuit was excluded, as it generally has few securities class action filings.

[34] Each of the metrics in the *Time to Resolution* subsection excludes IPO laddering cases and merger-objection cases.

[35] In fact, in January 2018, Petrobras agreed to settle its securities class action for $2.95 billion. That settlement has not yet been finalized as of the date of this report.

[36] Over the last decade, aggregate NERA-defined Investor Losses peaked at about $1.2 trillion at the end of 2012.

[37] The axes are in logarithmic scale, and the two largest settlements are excluded from this figure.

[38] The number of cases voluntarily dismissed within one year of filing nearly tripled.

[39] Commentary regarding a 2017 ruling in the Southern District of New York indicated that "[p]laintiffs in [*Cheung v. Bristol-Myers Squibb*] had originally filed their lawsuits in a federal district court, but after the federal district court issued a ruling that was unfavorable for the plaintiffs, the plaintiffs voluntarily dismissed their lawsuits without prejudice and then refiled them in Delaware state court." See "Getting Your Company's Case Removed to Federal Court When Sued in Your 'Home' State," *The Legal Intelligencer*, 21 December 2017. The case referred to is *Cheung v. Bristol-Myers Squibb*, Case No. 17cv6223 (DLC), (S.D.N.Y. Oct. 12, 2017).

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

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Exhibit 4

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

ROBERT HURWITZ, on Behalf of Himself and All Others Similarly Situated, Plaintiff, v. ERIC MULLINS, CHARLES W. ADCOCK, JONATHAN C. FARBER, TOWNES G. PRESSLER, JR., JOHN A. BAILEY, JONATHAN P. CARROLL, SCOTT W. SMITH, RICHARD A. ROBERT, W. RICHARD ANDERSON, BRUCE W. MCCULLOUGH, and LOREN SINGLETARY, Defendants.	)	Case No.: 1:15-cv-00711-MAK CLASS ACTION

NOTICE OF PROPOSED SETTLEMENT
OF CLASS ACTION AND SETTLEMENT HEARING

TO: ALL PERSONS OR ENTITIES:

(i) HOLDING LRR ENERGY, L.P. ("LRE" OR THE "COMPANY") COMMON UNITS AS OF AUGUST 28, 2015 THROUGH THE OCTOBER 5, 2015 CLOSE OF VANGUARD NATURAL RESOURCES, LLC'S ("VANGUARD") ACQUISITION OF LRE (THE "ACQUISITION"), WERE DAMAGED, AND ASSERT CLAIMS PRESENTLY SUSTAINED IN THE MARCH 13, 2017, DECEMBER 29, 2017, AND MARCH 8, 2018 ORDERS UNDER SECTIONS 14(A) AND 20(A) OF THE EXCHANGE ACT; AND

(ii) RECEIVING VANGUARD COMMON UNITS IN EXCHANGE FOR THEIR LRE COMMON UNITS ON OR ABOUT OCTOBER 5, 2015 UNDER THE REGISTRATION STATEMENT, AS AMENDED, WERE DAMAGED, AND ASSERT CLAIMS PRESENTLY SUSTAINED IN THE MARCH 13, 2017, DECEMBER 29, 2017, AND MARCH 8, 2018 ORDERS UNDER SECTIONS 11 AND 15 OF THE SECURITIES ACT;

(iii) BUT EXCLUDING DEFENDANTS, MEMBERS OF THE IMMEDIATE FAMILY OF EACH INDIVIDUAL DEFENDANT; AN OFFICER OR DIRECTOR OF VANGUARD OR LRE, A FIRM, TRUST, CORPORATION, OFFICER, OR OTHER ENTITY IN WHICH A DEFENDANT HAS OR HAD A CONTROLLING INTEREST; PERSONS PARTICIPATING IN THE ALLEGED MATERIAL OMISSIONS OR MISREPRESENTATIONS, AND THE LEGAL REPRESENTATIVES, AGENTS, AFFILIATES, HEIRS, BENEFICIARIES, SUCCESSORS-IN-INTEREST, OR ASSIGNS OF AN EXCLUDED PERSON OR ENTITY; AND ALSO EXCLUDING THOSE PERSONS LISTED IN EXHIBIT A-4 TO THE STIPULATION OF SETTLEMENT WHO, PURSUANT TO THE COURT'S JANUARY 17, 2018 ORDER [D.I. 126], TIMELY AND VALIDLY REQUESTED TO BE EXCLUDED FROM THE CLASS (THE "CLASS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS ACTION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR PRO RATA SHARE OF THE NET SETTLEMENT AMOUNT, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM ("PROOF OF CLAIM") **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE NOVEMBER 26, 2018.**

This Notice of Proposed Settlement of Class Action and Settlement Hearing ("Notice") has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the U.S. District Court for the District of Delaware (the "Court"). The purpose of this Notice is to inform you of: (i) the pendency of this class action (the "Action") between plaintiff Robert Hurwitz ("Class Representative" or "Hurwitz"), defendants Eric Mullins, Charles W. Adcock, Jonathan C. Farber, Townes G. Pressler, Jr., John A. Bailey, and Jonathan P. Carroll (the "LRE Defendants"), and defendants Scott W. Smith, Richard A. Robert, W. Richard Anderson, Bruce W. McCullough, and Loren Singletary (the "VNR Defendants") (the LRE Defendants and VNR Defendants are, collectively, the "Defendants"); (ii) the proposed $8 million settlement reached therein (the "Settlement"); and (iii) the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement as well as Class Counsel's application for fees, costs, and expenses

and Class Representative's request for a Service Award (the "Settlement Hearing"). This Notice describes what steps you may take in relation to the Settlement and this class action.[1]

This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action as to any of the Defendants or the merits of the claims or defenses asserted by or against the Defendants. This Notice is solely to advise you of the proposed Settlement of the Action and of your rights in connection therewith.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	As a Class Member, you will receive an Initial Settlement Payment (*see* No. 7 – How much will my payment be?). In addition to an Initial Settlement Payment, you are required to submit a Proof of Claim in order to **also** be eligible to receive a portion of the Net Settlement Amount allocated on a per-unit basis. **Proof of Claim forms must be postmarked or submitted online on or before November 26, 2018.**
OBJECT	Write to the Court about why you do not like the Settlement, the Initial Settlement Payment, the Plan of Allocation, and/or the request for attorneys' fees and expenses and the Service Award. You will still be a Member of the Class. **Objections must be *received* by the Court on or before November 9, 2018.**
GO TO THE HEARING ON DECEMBER 14, 2018.	You may speak in Court about the fairness of the Settlement at the Settlement Hearing currently scheduled for **12:30 p.m. Eastern, on December 14, 2018**, in the Courtroom of the Honorable Mark A. Kearney, at the U.S. District Court in and for the Eastern District of Pennsylvania, U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106.
DO NOTHING	As a Class Member, you will receive an Initial Settlement Payment but no additional payment. You will, however, still be a Class Member, which means that you give up your right to ever be part of any other lawsuit against the Defendants or any other Released Party about the legal claims being resolved by this Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

SUMMARY OF THIS NOTICE

Statement of Class Recovery

Pursuant to the Settlement described herein, an $8 million settlement has been established (the "Settlement Amount"). A Class Member's actual recovery consists of: (i) the Initial Settlement Payment; plus (ii) a portion of the Net Settlement Amount allocated on a per-unit basis among the Settlement Amount Recipients who submit to the Paying Agent a valid Proof of Claim by November 26, 2018 based on the number of Vanguard common units received by the applicable Settlement Amount Recipient upon closing of the Acquisition.

Statement of Potential Outcome of the Case

The Settling Parties disagree on both liability and damages and do not agree on the amount of damages that would be recoverable, if any, if the Class prevailed on each claim alleged. The Defendants deny that they are liable to the Class and deny that the Class has suffered any damages. The issues on which the parties disagree are many, but

[1] All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation of Settlement dated June 27, 2018, along with the addendums thereto dated July 11, 2018 and July 25, 2018 (the "Stipulation"), which are available online at www.lrrenergysecuritieslitigation.com and www.robbinsarroyo.com/category/notices.

include: (1) whether Defendants engaged in conduct that would give rise to any liability to the Class under the federal securities laws, or any other laws; (2) whether Defendants have valid defenses to any such claims of liability; (3) whether the definitive joint registration statement/proxy statement disseminated by Defendants in connection with the Acquisition omitted material information concerning Vanguard's then-existing financial condition in violation of the federal securities laws; and (4) the amount of damages (if any) to which Class Representative and the Class are entitled.

Statement of Attorneys' Fees and Expenses Sought

Class Counsel will apply to the Court for an award of attorneys' fees not to exceed $2.4 million (30% of the Settlement Amount), plus expenses not to exceed $325,000, plus interest earned on both amounts at the same rate as earned by the Settlement Fund. Since the Action's inception, Class Counsel has expended considerable time and effort in the prosecution of this Action on a wholly contingent basis and has advanced the expenses of the Action with the expectation that if counsel was successful in obtaining a recovery for the Class, counsel would be paid from such recovery. In addition, the Class Representative intends to petition the Court for a Service Award to reflect the time and effort he has expended on behalf of the Class.

Further Information

For further information regarding the Action, this Notice, or to review the Stipulation, please contact the Claims Administrator toll-free at (800) 324-2941, or visit the website at www.lrrenergysecuritieslitigation.com.

You may also contact representatives of counsel for the Class: Stephen J. Oddo, Esq., Robbins Arroyo LLP, 600 B Street, Suite 1900, San Diego, CA 92101, Telephone: 619-525-3990, www.robbinsarroyo.com.

PLEASE DO NOT CALL THE COURT OR DEFENDANTS WITH QUESTIONS ABOUT THE SETTLEMENT.

Reasons for the Settlement

Class Representative's principal reason for entering into the Settlement is the benefit to the Class now, without further risk or the delays inherent in continued litigation. The cash benefit under the Settlement must be considered against the significant risk that a smaller recovery—or, indeed, no recovery at all—might be achieved after contested motions, trial, and likely appeals, a process that could last several years into the future. For Defendants, who have denied and continue to deny all allegations of liability, fault, or wrongdoing whatsoever, the principal reason for entering into the Settlement is to eliminate the uncertainty, risk, costs, and burdens inherent in any litigation, especially in complex cases such as this Action.

BASIC INFORMATION

1. Why did I get this Notice package?

This Notice was sent to you pursuant to an Order of a U.S. federal court because you or someone in your family or an investment account for which you serve as custodian may have owned LRE common units as of August 28, 2015 that were exchanged for Vanguard common units on or about October 5, 2015, upon close of the Acquisition. This Notice explains the class action lawsuit, the Settlement, Class Members' legal rights in connection with the Settlement, what benefits are available, who is eligible for them, and how to get them.

This Action is pending in the U.S. District Court for the District of Delaware and the case is known as *Hurwitz v. Mullins, et al.*, Case No. 1:15-cv-00711-MAK. The case has been assigned to the Honorable Mark A. Kearney of the U.S. District Court for the Eastern District of Pennsylvania. The individual representing the Class is the Class Representative, and the individuals he sued and who have now settled are called the Defendants.

2. What is this lawsuit about?

On August 18, 2015, Class Representative filed a class action complaint on behalf of the public unitholders of LRE against the LRE Defendants, Vanguard, and Lighthouse Merger Sub, LLC ("Lighthouse Merger Sub"), asserting violations of sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and U.S. Securities and Exchange Commission ("SEC") Rule 14a-9 promulgated thereunder, in connection with the acquisition of LRE by Vanguard and Lighthouse Merger Sub that was first announced on April 20, 2015. On January 20, 2016, the Court appointed Hurwitz as Lead Plaintiff, Robbins Arroyo LLP as Lead Counsel, and Cooch and Taylor, P.A. as Liaison Counsel for plaintiff.

On June 22, 2016, Hurwitz filed the operative Amended Class Action Complaint ("Complaint"), adding LRE and the VNR Defendants as defendants, and alleging: violations of section 14(a) of the Exchange Act against LRE, Vanguard, Lighthouse Merger Sub, the LRE Defendants, and the VNR Defendants; violations of section 20(a) of the Exchange Act against the LRE Defendants and the VNR Defendants; and violations of sections 11 and 15 of Securities Act of 1933 ("Securities Act") against Vanguard and the VNR Defendants.

On August 22, 2016, Defendants filed their motion to dismiss the Complaint, which Hurwitz opposed.

On February 1, 2017, Vanguard and several of its subsidiaries, including LRE, filed voluntary petitions for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Southern District of Texas. On February 23, 2017, a notice of bankruptcy and suggestion of automatic stay was filed in this Court by Vanguard and LRE. On August 1, 2017, Vanguard announced that it successfully emerged from Chapter 11 as a new corporation under the name of Vanguard Natural Resources, Inc.[2]

On March 13, 2017, Judge Sue L. Robinson denied Defendants' motion to dismiss. On March 27, 2017, the Defendants filed answers to the Complaint.

On July 25, 2017, this matter was reassigned to Judge Mark A. Kearney in the U.S. District Court for the Eastern District of Pennsylvania upon Judge Robinson's retirement. On August 2, 2017, Judge Kearney issued a revised scheduling order shortening the period for fact and expert discovery and setting a July 30, 2018 trial date.

On November 3, 2017, Hurwitz moved for class certification, which Defendants opposed. Also on November 3, 2017, Defendants filed motions for summary judgment on Hurwitz's individual Securities Act and Exchange Act claims. On December 29, 2017, Defendants' motions for summary judgment were denied without prejudice as premature. On January 2, 2018, Judge Kearney granted Hurwitz's motion for class certification and conditionally certified a class consisting of former LRE unitholders who held LRE common units as of August 28, 2015 that were exchanged on or about October 5, 2015 for Vanguard common units in connection with the close of the LRE Acquisition.

On January 17, 2018, the Court entered an order approving the Class notice, notice procedures, and appointment of notice administrator and set May 29, 2018 as the deadline for Class Members to request exclusion from the Class. Since March 30, 2018, approximately 14,134 notices have been mailed to potential members of the certified Class. As of May 29, 2018, twenty-two putative members of the Class have submitted requests for exclusions.

During the pendency of the Action, the Settling Parties have undertaken extensive fact and expert discovery relating to the claims in this litigation. Specifically, Class Counsel has reviewed tens of thousands of pages of documents and other materials produced by Defendants in response to numerous discovery requests, including e-mail communications, board materials, financial data, analyst reports, and SEC filings. Class Counsel has also reviewed documents and other materials produced in response to the subpoenas Class Counsel issued to various third-parties, including, among others: (i) LRE's financial advisor, Tudor, Pickering, Holt & Company; (ii) LRE's conflicts committee's financial advisor, Simmons & Company; and (iii) Vanguard's lead lender and administrative agent, Citibank, N.A. Since January 2018, Class Counsel has deposed ten witnesses who played a role in the Acquisition of LRE and/or the administration of Vanguard's credit agreement, including many of the former officers and/or directors of LRE and Vanguard. Class Counsel has responded to discovery propounded by Defendants and sat for a deposition by Defendants' counsel. In addition, Class Counsel retained three industry and financial experts to assist with evaluating documents and testimony as well as assessing damages sustained by Class Representative and the Class as a result of Defendants' alleged violations of the Exchange Act and the Securities Act. On April 9, 2018, Class Counsel provided Defendants reports of the three persons designated by Class Representative as experts. That same day, Class Representative received the affirmative report of the person whom Defendants designated as an expert.

In April 2018, the Settling Parties agreed to participate in mediation before Robert A. Meyer, Esq. The Settling Parties prepared detailed mediation statements and engaged in a full-day, in-person mediation session with Mr. Meyer on May 17, 2018. These efforts culminated with the Settling Parties agreeing to settle the Action for $8,000,000, subject to the negotiation of the terms of a Stipulation of Settlement and approval by the Court. On May 22, 2018, the Settling Parties informed the Court that they reached an agreement-in-principle to settle the Action.

[2] On March 7, 2018, Class Representative stipulated to the dismissal of LRE and Vanguard as, pursuant to the Bankruptcy Plan, any claims against the debtors Vanguard and LRE were expunged, disallowed, and discharged. Pursuant to the stipulation, on March 8, 2018, the Court dismissed defendants LRE and Vanguard with prejudice.

3. Why is there a Settlement?

The Court has not decided in favor of the Defendants or the Class Representative. Instead, both sides agreed to the Settlement to avoid the distraction, costs, and risks of further litigation, and Class Representative agreed to the Settlement in order to ensure that Class Members will receive compensation.

WHO IS IN THE SETTLEMENT

4. How do I know if I am a Member of the Class?

The Court directed that everyone who fits this description is a Class Member: **all Persons or entities that held LRE common units as of August 28, 2015 that were exchanged for Vanguard common units on or about October 5, 2015 under the registration statement (as amended) issued in relation to the Acquisition and were damaged thereby**, except those Persons or entities that are excluded.

Excluded from the Class are: Defendants; members of the immediate family of each individual Defendant; an officer or director of Vanguard or LRE; a firm, trust, corporation, officer, or other entity in which a Defendant has or had a controlling interest; Persons participating in the alleged material omissions or misrepresentations; and the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any excluded Person or entity. Also excluded from the Class is any Class Member who requested exclusion on or before the May 29, 2018 deadline provided in the Class notice.

Please Note: If you are a Class Member and you wish to be eligible to participate in the pro rata distribution of proceeds from the Net Settlement Amount, you are required to submit the Proof of Claim that is being distributed with this Notice and the required supporting documentation as set forth therein postmarked or submitted online on or before November 26, 2018.

5. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at (800) 324-2941, or you can fill out and return the Proof of Claim form enclosed with this Notice package to see if you qualify.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the Settlement provide?

The Settlement provides that, in exchange for the release of the Released Claims (as defined below) and dismissal of the Action with prejudice, Defendants have agreed to instruct their respective insurer and/or indemnitor to pay their respective portion of a Settlement Amount that totals $8 million in cash. After the deduction of Administration Costs, taxes, Initial Settlement Payments, fees, expenses, and Service Award, the remaining Settlement Amount proceeds will be distributed according to the Plan of Allocation. (*See* No. 19 – How will the Settlement Amount be Allocated?)

7. How much will my payment be?

A payment of $5.00 (five dollars, payable via check—each an "Initial Settlement Payment" and together the "Initial Settlement Payments") will be made to each Person who: (i) is a Class Member; (ii) received notice of class pendency pursuant to the Court's January 17, 2018 Order [D.I. 126], or otherwise provides a valid Proof of Claim identifying him, her, or itself as a valid Class Member; and (iii) did not validly request exclusion from the Class.[3]

In addition to an Initial Settlement Payment, each Class Member is **also** eligible to receive a portion of the Net Settlement Amount. (*See* No. 19 – How will the Settlement Amount be allocated?). Your share of the Net Settlement Amount will depend on several things, including the total amount of claims represented by the valid Proof of Claim forms that Class Members send in, compared to the amount of your claim.

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[3] For avoidance of doubt, submission of a Proof of Claim is not required for a Class Member to be entitled to receive an Initial Settlement Payment.

The proposed Settlement, if approved by the Court, will provide $8 million to pay claims of investors who received Vanguard common units on or around October 5, 2015 in connection with the close of the Acquisition. The $8 million represents a recovery of approximately $0.76 per Vanguard common unit received by the Class.

The Court-appointed lawyers for the Class will ask the Court for up to $2.4 million in attorneys' fees (30% of the Settlement Amount) and up to $325,000 in reimbursement for expenses for their work litigating the case and negotiating the Settlement. They will also ask for an award to the Class Representative not to exceed $25,000, for his reasonable time and effort in securing the Settlement. If approved by the Court, these amounts (totaling approximately $0.26 per Vanguard common unit) will be paid from the Settlement Fund.

The estimated average recovery for the Class, after deducting attorneys' fees and expenses, and the Class Representative award of reasonable costs and expenses (if approved by the Court), is approximately $0.50 per Vanguard common unit received in connection with the close of the Acquisition of LRE.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

8. How can I get a payment?

The Initial Settlement Payments will be distributed by the Claims Administrator via U.S. Mail to each eligible Person after the Final Approval Order becomes Final and is no longer subject to appeal.

To be eligible to receive a pro rata payment from the Net Settlement Amount, you **MUST** submit a Proof of Claim form. A Proof of Claim form is enclosed with this Notice or it may be downloaded at www.lrrenergysecuritieslitigation.com. Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and **mail or submit it online so that it is postmarked or received no later than November 26, 2018.** The Proof of Claim form may be submitted online at www.lrrenergysecuritieslitigation.com.

9. When would I get my payment(s)?

The Court will hold a Settlement Hearing on December 14, 2018, at 12:30 p.m., to decide whether to approve the Settlement. If the Court approves the Settlement, there might be appeals. It is always uncertain whether appeals can be resolved, and if so, how long it would take to resolve them. It also takes time for all the Proofs of Claim to be processed. Please be patient. In any event, the Settlement calls for the Initial Settlement Payments to be distributed to eligible Class Members after the Final Approval Order approving the Settlement becomes a "Final" judgment and is no longer subject to appeal.

10. What am I giving up if the Settlement is approved?

Unless you timely and validly excluded yourself, you are in the Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or the Released Parties about the Released Claims. It also means that all of the Court's orders will apply to you and legally bind you. If the Settlement is approved and if you are a Class Member and have not timely and validly opted out of the Class, you will give up all "Released Claims," including "Unknown Claims" (as defined below) that you may have against the "Released Parties" (as defined below):

- "Released Claims" means any and all manner of claims, rights, duties, controversies, obligations, demands, actions, debts, amounts, costs, sums of money, expenses, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action of every nature and description, that have been, could have been, or in the future can or might be asserted in any court, tribunal, or proceeding (including but not limited to any claims arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule, or regulation, at law or in equity), whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether pleaded or unpleaded, whether suspected or unsuspected, whether apparent or unapparent, including Unknown Claims as defined in paragraph 1.31 of the Stipulation, that the Class Representative or any Class Member asserted or could have asserted based upon, arising out of, or relating to any fact, matter, allegation, transaction, event, disclosure, statement, representation, act, failure to act, or omission that was asserted or could have been asserted by Class Representative or any Class Member which arise out of or relate in any way to: (i) the Acquisition; (ii) any actions, deliberations or negotiations in connection with the Acquisition or any agreements, disclosures, or events related thereto; (iii) the transfer or conversion of LRE units as a result of the Acquisition; or (iv) any disclosure, public filing (including, but not limited to registration statements and proxies), or other statements, acts, or omissions by LRE, Vanguard, Lighthouse Merger Sub, any Defendant, or any Released Party based

upon, arising out of, or relating to any fact, matter, allegation, transaction, event, disclosure, statement, representation, act, failure to act, or omission that was asserted or could have been asserted by Class Representative or any Class Member in the Action; provided, however, that the Released Claims shall not include claims to enforce the Settlement.

- "Released Parties" collectively and "Released Party" individually means: (i) each Defendant; (ii) any Person which is, was, or will be related to or affiliated with any Defendant or in which any Defendant has, had, or will have a controlling interest; (iii) LRE; (iv) Vanguard and Vanguard Natural Resources Inc.; and (v) each and all of the foregoing's current and former parents, subsidiaries, general partners, divisions, and affiliates (including, for avoidance of doubt, Lime Rock Resources), and the respective present and former employees, members, principals, officers, directors, controlling unitholders, attorneys, advisors, accountants, auditors, and insurers and reinsurers of each of them; and the predecessors, successors, estates, spouses, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives, and assigns of each of them, in their capacity as such.

- "Unknown Claims" means any claim that Class Representative or any other Class Member does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against any Released Party, including without limitation those which, if known, might have affected the decision to enter into the Settlement or to object or to not object to the Settlement. With respect to any of the Released Claims, the Settling Parties stipulate and agree that upon the occurrence of the Effective Date and by operation of the Final Approval Order, Class Representative and each Class Member shall be deemed to have expressly waived, relinquished, and released any and all provisions, rights, and benefits conferred by or under California Civil Code §1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

  > A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

  Class Representative acknowledges, and the Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Class Representative, and by operation of law the Class Members, to completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Class Representative acknowledges, and the Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of "Released Claims" was separately bargained for and was a material element of the Settlement and was relied upon by each and all of Defendants in entering into the Stipulation.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court ordered that the law firm of Robbins Arroyo LLP represents the Class Members, including you. These lawyers are called Lead Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. How will the lawyers be paid?

Class Counsel will apply to the Court for an award of attorneys' fees not to exceed $2.4 million (30% of the Settlement Amount) and for expenses and costs in an amount not to exceed $325,000 in connection with the Action, plus interest on such fees and expenses at the same rate as earned by the Settlement Fund. In addition, Class Representative may seek a Service Award of up to $25,000 to reflect the time and effort he has expended on behalf of the Class. Such sums as may be approved by the Court will be paid from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or any part of it.

13. How do I tell the Court that I object to the proposed Settlement?

If you are a Class Member, you can comment or object to the proposed Settlement and/or Lead Class Counsel's fee and expense application and Class Representative's Service Award. You can write to the Court setting out your comment or objection. The Court will consider your views. To comment or object, you must send a signed letter saying that you wish to comment on or object to the proposed Settlement in the *LRE Litigation*. Include your name, address, telephone number, and your signature, and documents sufficient to prove: (i) the number of LRE common units you held as of August 28, 2015 and (ii) the number of Vanguard common units you received on or about October 5, 2015 in exchange for your LRE units owned as of August 28, 2015 in connection with the close of the Acquisition, and state your comments or the reasons why you object to the proposed Settlement. Your comments or objections must be filed or delivered **on or before November 9, 2018** to the Clerk of Court, U.S. District Court for the District of Delaware, 844 North King Street Unit 18, Wilmington, DE 19801.

THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

14. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Settlement Hearing at **12:30 p.m., on December 14, 2018**, in the Courtroom of the Honorable Mark A. Kearney, at the U.S. District Court in and for the Eastern District of Pennsylvania, U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. At the hearing, the Court will consider whether the Settlement and requested fees and expenses are fair, reasonable, and adequate. If there are objections, the Court will consider them, even if you do not ask to speak at the hearing. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Class Representative. After the Settlement Hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Class Members. If you want to attend the hearing, you should check with Lead Class Counsel or the Settlement website www.lrrenergysecuritieslitigation.com beforehand to be sure that the date and/or time has not changed.

15. Do I have to come to the Settlement Hearing?

No. Lead Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

16. May I speak at the hearing?

If you object to the Settlement or the fee and expense application, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must file an objection with the Court prior to the objection deadline (*see* No. 13 — How do I tell the Court that I object to the proposed Settlement?). Persons who intend to object to the Settlement and/or any attorneys' fees and expenses to be awarded to Lead Class Counsel or Class Representative and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

IF YOU DO NOTHING

17. What happens if I do nothing?

If you do nothing, your recovery will be limited to the Initial Settlement Payment.

If you do nothing, you will not receive any *pro rata* recovery from the Net Settlement Amount.

In addition, unless you timely and validly excluded yourself from the Class by May 29, 2018, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the Released Parties about the Released Claims.

GETTING MORE INFORMATION

18. How do I get more information?

For even more detailed information concerning the matters involved in this Action, you can obtain answers to common questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at (800) 324-2941. Reference is also made to the Stipulation, to the pleadings in support of the Settlement, to the Orders entered by the Court and to the other settlement-related papers filed in the Action, which are posted on the Settlement website at www.lrrenergysecuritieslitigation.com, and which may be inspected at the Office of the Clerk of the U.S. District Court in and for the District of Delaware, U.S. Courthouse, 844 North King Street Unit 18, Wilmington, DE 19801, during regular business hours. For a fee, all papers filed in this Action are available at www.pacer.gov.

PLAN OF ALLOCATION OF NET SETTLEMENT AMOUNT AMONG CLASS MEMBERS

19. How will the Settlement Amount be allocated?

The Settlement Amount of $8 million and any interest earned thereon is the "Settlement Fund."

Initial Settlement Payments:

If the Settlement is approved by the Court and upon the Court's Final Approval Order becoming a "Final" judgment and is no longer subject to appeal, the Initial Settlement Payments will be disbursed to each eligible Class Member by the Paying Agent via U.S. Mail. The Initial Settlement Payments will be made payable to Person(s) receiving this Notice plus potentially others who submit valid Proofs of Claim.

You must cash the Initial Settlement Payment within one hundred and twenty (120) days of the date of issuance. Each uncashed Initial Settlement Payment shall be void one hundred and twenty (120) days after the date of issuance. The remaining balance from each uncashed and voided Initial Settlement Payment shall be reallocated and included in the Net Settlement Amount.

Allocation of the Net Settlement Amount:

After payment of the Initial Settlement Payments, the Settlement Fund, less all taxes, approved costs, fees, expenses, and the Initial Settlement Payments (the "Net Settlement Amount") shall be distributed to Class Members who submit timely and valid Proof of Claim forms to the Claims Administrator ("Settlement Amount Recipients").

In the unlikely event there are sufficient funds in the Net Settlement Amount, each Settlement Amount Recipient will receive an amount equal to the Settlement Amount Recipient's claim, as outlined below. If, however, and as is more likely, the amount in the Net Settlement Amount is not sufficient to permit payment of the total claim of each Settlement Amount Recipient, then each Settlement Amount Recipient shall be paid the percentage of the Net Settlement Amount that each Settlement Amount Recipient's claim bears to the total of the claims of all Settlement Amount Recipient. Payment in this manner shall be deemed conclusive against all Settlement Amount Recipients.

The Net Settlement Amount will be disbursed by the Paying Agent to each Settlement Amount Recipients as soon as reasonably practicable after the Initial Settlement Payments. The Net Settlement Amount will be allocated on a per-unit basis amongst the Settlement Amount Recipients who have submitted to the Claims Administrator a valid Proof of Claim by the deadline provided in this Notice based on the number of LRE common units held as of August 28, 2015 that were exchanged for Vanguard common units on or about October 5, 2015 upon close of the Acquisition.

Distributions will be made to Settlement Amount Recipients after all claims have been processed and after the Court has finally approved the Settlement. If any funds remain in the Net Settlement Amount by reason of uncashed distribution checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Amount cash their distributions, any balance remaining in the Net Settlement Amount after at least one hundred and twenty (120) days after the initial distribution of such funds shall be used: (a) first, to pay any amounts mistakenly omitted from the initial disbursement; (b) second, additional settlement administration fees, costs, and expenses, including those of Lead Class Counsel as may

be approved by the Court; and (c) to make a second distribution to claimants who cashed their checks from the initial distribution and who would receive at least $10.00, after payment of the estimated costs, expenses, or fees to be incurred in administering the Net Settlement Amount and in making this second distribution, if such second distribution is economically feasible. These redistributions shall be repeated, if economically feasible, until the balance remaining in the Net Settlement Amount is *de minimis* and such remaining balance shall then be distributed to the United Way of Greater Houston's Disaster Recovery Fund, which was selected by the Settling Parties because both LRE and Vanguard were headquartered in Houston, Texas, and many Class Members are believed also to reside there.

Defendants, their respective counsel, and all other Released Parties will have no responsibility or liability whatsoever for the investment of the Settlement Fund, the distribution of the Initial Settlement Payments, the Net Settlement Amount, the Plan of Allocation, or the payment of any claim. Class Representative and Class Counsel, likewise, will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you caused an individual or organization, for a beneficial interest other than yourself, to hold LRE common units as of August 28, 2015 that were exchanged for Vanguard common units on or about October 5, 2015 in connection with the close of the Acquisition, the Court has directed that, WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last known address of each person or organization that held LRE/Vanguard common units during such time period, or (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within ten (10) calendar days mail the Notice and Proof of Claim form directly to the beneficial owners of the LRE/Vanguard common units referred to herein. If you choose to follow alternative procedure (b), upon such mailing, you must send a statement to the Claims Administrator confirming that the mailing was made as directed and retain the names and addresses for any future mailings to Class Members. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Your reasonable expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

LRR Energy Securities Litigation Settlement
c/o GCG
P.O. Box 10532
Dublin, Ohio 43017-4532
(800) 324-2941
www.lrrenergysecuritieslitigation.com

Dated: August 9, 2018

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Exhibit 5

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Energy Co. Derides Potential Investor Class Rep As Ignorant

By **Jack Newsham**

Law360, New York (December 8, 2017, 7:45 PM EST) -- Oil and gas producer Vanguard Natural Resources LLC and affiliates told a Delaware federal judge on Thursday that the proposed representative for a class of investors in a merger fraud suit is too uninformed about the suit he supposedly brought to spearhead the case.

Robert Hurwitz accuses Vanguard of covering up its "debt crisis" so he and others who held units in the limited partnership LRR Energy would go along with a merger. But Vanguard, LRR and their directors and executives said that Hurwitz's deposition showed that he wasn't an adequate class representative, as he is in ill health, doesn't know much about the suit, only talks to his lawyer three or four times a year and can only "regurgitate" what his attorneys write down.

"To the extent Mr. Hurwitz said anything during his deposition resembling the allegations in this lawsuit, these statements bore only a glancing similarity to the lawsuit and were the result of his attorneys spoon-feeding their claims to him," the defendants wrote. "During his deposition, Mr. Hurwitz's attorneys repeatedly advised him to refer to a script they had drafted."

The suit contends that Vanguard's lack of disclosures about its financial problems amounted to a fraud on LRR investors and violated Sections 11 and 15 of the Securities Act and Sections 14 and 20 of the Exchange Act, and Hurwitz **sought class certification** last week. The defendants said the suit was a throwback to the kind of lawyer-led securities suit the Private Securities Litigation Reform Act was meant to prevent, however, and urged the judge to turn him down.

Vanguard and its co-defendants also said the plaintiffs haven't proposed a classwide damages model yet, which they said would be vital for the suit to advance under U.S. Supreme Court and Third Circuit precedents. The closest the proposed class gets to a methodology is noting that the price for a Vanguard unit, which is akin to stock, fell during a period that began months before it filed its allegedly deceptive proxy statements, the defendants argued.

Even if the court allows much of the case to move forward as a class action, the defendants urged that it shrink the boundaries of the class on two claims. Only LRR unitholders who exchanged their LRR units for Vanguard units should be eligible for damages, not those who sold them before that point, the defendants said.

In a reply shared with Law360 late Friday, lawyers for Hurwitz and the proposed class said the defendants' arguments rely "on cherry-picked snippets of deposition testimony." They said Hurwitz was competent and in good health, as evidence by answers given elsewhere in his deposition and his ability to respond to discovery and field questions for "several hours" at a deposition.

The plaintiffs also rejected the charge that they failed to explain how they would calculate damages, saying they had referred to a provision of the Securities Act and disclosed the theories they would cite in their bid to win damages under the Exchange Act.

Lawyers for the defendants didn't respond to a request for comment.

Hurwitz and the proposed class are represented by Brian J. Robbins, Stephen J. Oddo, Nichole T.

Browning and Eric M. Carrino of Robbins Arroyo LLP and Blake A. Bennett of Cooch and Taylor PA.

Vanguard, LRR and Vanguard's directors are represented by Rolin P. Bissell, Tammy L. Mercer and Pilar G. Kraman of Young Conaway Stargatt & Taylor LLP, and Michael C. Holmes, Craig E. Zieminski and Robert Ritchie of Vinson & Elkins LLP.

LRR's former directors are represented by Brock E. Czeschin and Travis S. Hunter of Richards Layton & Finger PA, J. Wiley George, W. Scott Locher and David P. Whittlesey of Andrews Kurth Kenyon LLP, and James T. Smith and Evan H. Lechtman of Blank Rome LLP.

The case is Hurwtiz v. LRR Energy LP et al., case number 1:15-cv-00711, in the U.S. District Court for the District of Delaware.

--Editing by Jack Karp.

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Exhibit 6

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

WESTERN PENNSYLVANIA ELECTRICAL EMPLOYEES PENSION FUND, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. DENNIS ALTER, et al., Defendants.	Civil Action No. 2:09-cv-04730-CMR <u>CLASS ACTION</u>

FILED
AUG 04 2014
MICHAEL E. KUNZ, Clerk
By______ Dep. Clerk

ORDER AWARDING LEAD PLAINTIFF'S COUNSEL'S ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on August 4, 2014, on the application of Lead Plaintiff's counsel for an award of attorneys' fees and expenses incurred in the Litigation, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of March 13, 2014 (the "Stipulation"), and filed with the Court.

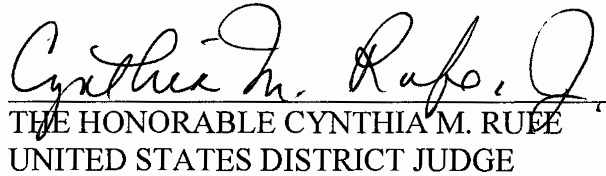
2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Plaintiff's counsel attorneys' fees of 30% of the Settlement Fund plus expenses in the amount of $471,454.15, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method and when cross-checked under the lodestar/multiplier method, given the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class.

4. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Lead Counsel subject to the terms, conditions and obligations of the Stipulation, and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: August 4, 2014



THE HONORABLE CYNTHIA M. RUFE
UNITED STATES DISTRICT JUDGE

ENTERED
AUG 04 2014
CLERK OF COURT

Exhibit 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE ADVANTA CORP. ERISA LITIG.	**CIVIL ACTION NO.: 2:09-cv-04974-CMR**

ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND CASE CONTRIBUTION AWARDS TO THE NAMED PLAINTIFFS

FILED
JAN - 9 2014
MICHAEL E. KUNZ, Clerk
By ________ Dep. Clerk

The matter having come before the Court on January 8, 2014, on the application of Class Counsel for an award of attorneys' fees, reimbursement of expenses incurred in the Action, and for Case Contribution Awards to the Named Plaintiffs, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Action to be fair, reasonable, and adequate, and otherwise being fully informed in the premises and good cause appearing therefrom:[1]

IT IS HEREBY ORDERED AND ADJUDGED:

1. The Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class.

2. Class Counsel is hereby awarded attorneys' fees of $1,350,000.00 and reimbursement of expenses in the sum of $ 242,667.90, to be paid from the Settlement Fund. The Court finds that the amount of fees awarded is fair and reasonable given the substantial risks of non-recovery, the time and effort involved, and the results obtained for the Settlement Class.

3. Named Plaintiff Matthew A. Ragan is awarded $5,000.00 as a Case Contribution Award, as defined in the Settlement Agreement, in recognition of his contribution to this Action.

4. Named Plaintiff Paula Hiatt is awarded $5,000.00 as a Case Contribution Award, as defined in the Settlement Agreement, in recognition of her contribution to this Action.

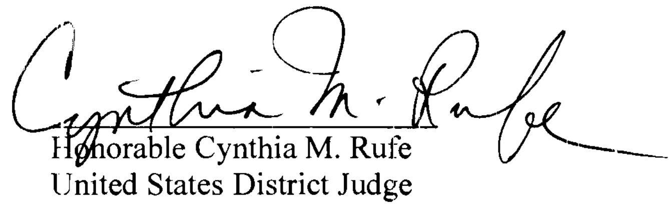
5. Named Plaintiff Pamela Yates is awarded $5,000.00 as a Case Contribution Award, as defined in the Settlement Agreement, in recognition of her contributions to this Action.

---

[1] All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated as of August 12, 2013, and filed with this Court.

6. Named Plaintiff Joann Claflin is awarded $5,000.00 as a Case Contribution Award, as defined in the Settlement Agreement, in recognition of her contributions to this Action.

SO ORDERED, this 9th day of January, 2014.



Honorable Cynthia M. Rufe
United States District Judge