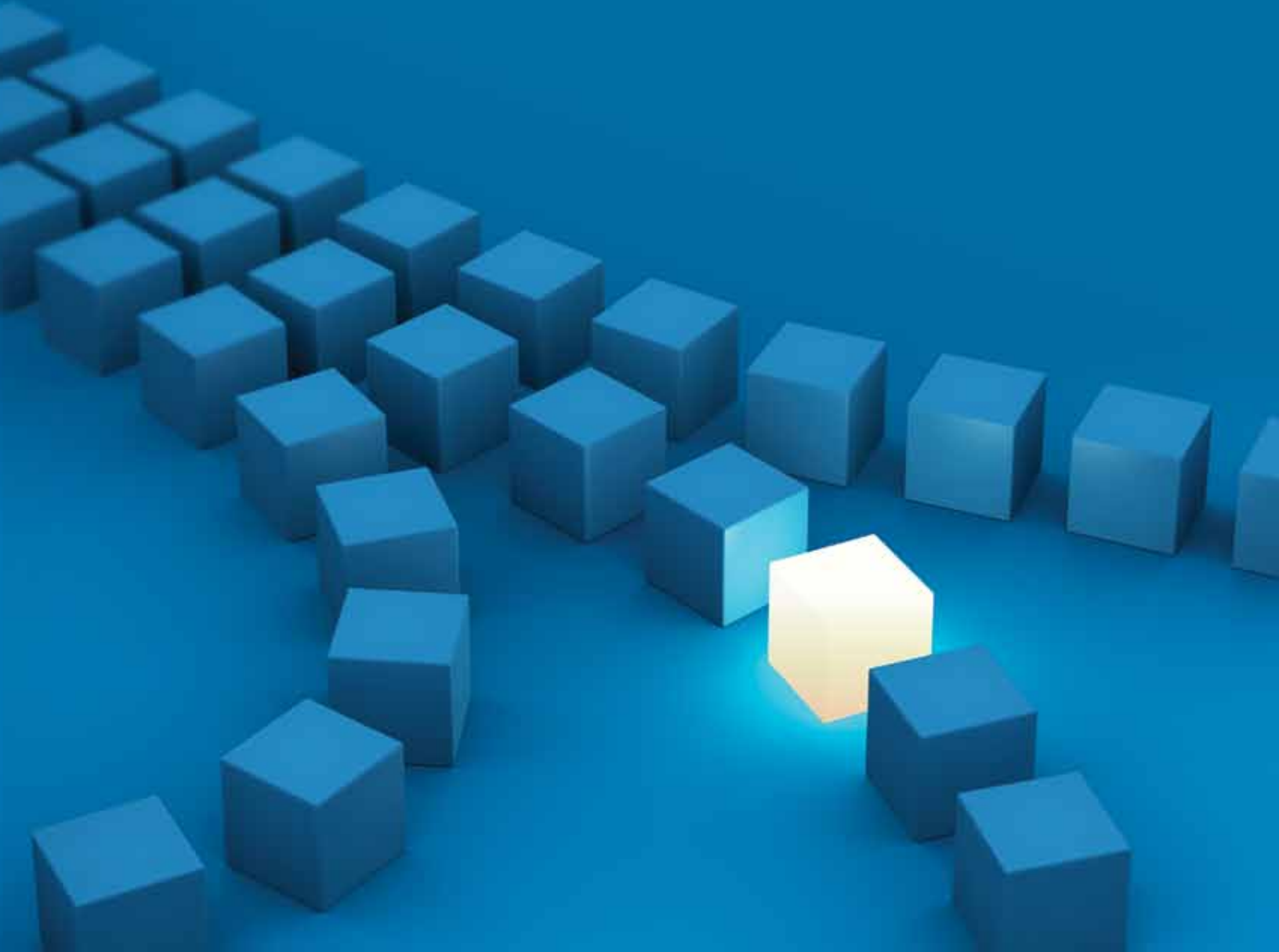




Trends 2010 Mid-Year Study: Filings Decline as the Wave of Credit Crisis Cases Subsides, Median Settlement at Record High

By Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and Svetlana Starykh

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Trends 2010 Mid-Year Study: Filings Decline as the Wave of Credit Crisis Cases Subsides, Median Settlement at Record High¹

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July 2010

The pace of federal securities class action filings was slower in the first half of 2010 than in 2009, with filings on track to decline for a second successive year from their 2008 peak. The pace of credit crisis-related filings from January to June of this year slowed to about three per month on average, less than half the rate observed in 2008 and the first half of 2009. Cases involving auction-rate securities (ARS), Ponzi schemes, and exchange-traded funds (ETFs) were also filed at a lower rate in the first half of this year than in 2009.

These declines were partially offset, however, by an increase in the frequency of other types of filings as compared to last year. These included cases alleging breaches of fiduciary duty in connection with mergers and acquisitions and cases filed against companies in the life sciences and technology sectors. Certain recent events such as the Gulf of Mexico oil spill have also given rise to new filings in 2010.

Filings in the Ninth Circuit surpassed filings in the Second Circuit by a slight margin during the first half of 2010, a break with the pattern of the previous five years. In part, this reflects the shift in the composition of new filings away from credit crisis cases, which have been concentrated in the Second Circuit.

Credit crisis-related cases have been dismissed at a slightly lower rate than other types of cases filed around the same time. Moreover, among cases that have been dismissed, credit crisis cases take somewhat longer to reach a dismissal: on average, the time from filing to dismissal has been about 15 months for credit crisis cases, as compared to about 13 months for other types of cases.

The number of complaints filed alleging product and operational defects has risen. This type of allegation—which includes alleged defects relating to both financial and non-financial products—occurred with greater frequency than any other in complaints filed in the first half of 2010. Despite the attention devoted to financial product-related litigation, the growth in the product and operational defects category mostly reflects traditional non-financial product and operational defect allegations, such as those relating to the oil spill in the Gulf of Mexico or vehicle recalls issued by Toyota. Another trend in allegations in the first half of 2010 was an upturn in cases alleging breach of fiduciary duty.

Filings against foreign-domiciled companies, as a share of all filings, were higher in the first half of 2010 than in any previous year since the passage of the Private Securities Litigation Reform Act (PSLRA) in late 1995. However, the June 2010 US Supreme Court decision in *Morrison v. National Australia Bank*,² which addressed the extraterritorial application of US securities laws, could reverse this trend. To the extent that the *Morrison* decision limits claims that can be made against companies not listed on a US stock exchange, we might expect to observe fewer of these types of filings in the future. The decision may also affect the resolutions of some pending cases against foreign companies.

The average securities class action settlement in the first half of 2010 was higher than in any prior year, due in large part to the Enron settlement, which received court approval this year. Omitting Enron and other “outlier” settlements, however, the 2010 average is actually down as compared with the similarly adjusted average in recent years. Conversely, the size of the typical securities class action settlement rose substantially in the first half of 2010, with the median settlement reaching nearly \$12 million, considerably higher than in any prior year since the passage of the PSLRA.

One factor that may be driving the observed increase in the median settlement is a substantial increase in median investor losses—a variable that correlates highly with settlement size—for cases that settled in the first half of 2010.³ Median investor losses in the first half of this year were \$436 million, the highest level in any year since the enactment of the PSLRA. Despite this, settlements were still high relative to investor losses in the first half of 2010, with the median ratio of settlements to investor losses reaching 3.1%, a proportion higher than or equal to that observed in any year since 2002.

Looking ahead, certain provisions of the recently enacted Dodd-Frank Act⁴ have the potential to affect future securities class action filings and settlements. First, the Act applies tests similar to those that were used to determine extraterritorial jurisdiction prior to the *Morrison* decision for Securities and Exchange Commission (SEC) and Department of Justice (DOJ) enforcement actions. In addition, the Act directs the SEC to study whether this should also be done for private civil actions. If this results in a similar change being applied to private litigation, that could reverse or at least mute any effect *Morrison* might otherwise have on securities class action filings and settlements.

Another relevant Dodd-Frank provision opens the door to potentially establishing a private right of action for aiding and abetting in securities fraud cases. The establishment of such a right would effectively reverse Supreme Court decisions barring liability for entities that do not actually make statements or engage in conduct relied upon by investors. Both the provisions regarding extraterritorial application of the securities laws and those regarding potential aiding and abetting liability may promote additional class action filings in the future.

Trends in Filings

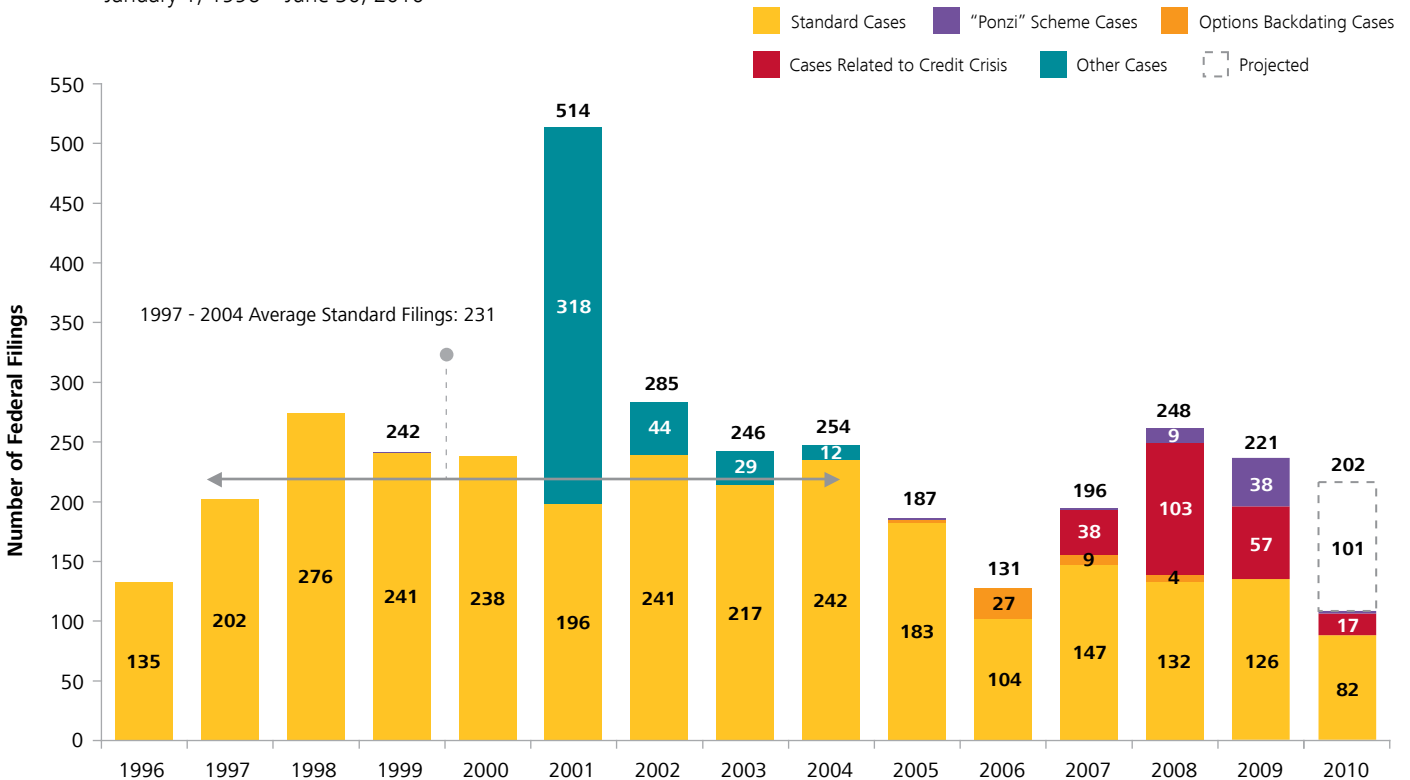
The pace of federal securities class action filings continued to slow in the first half of 2010 from its recent peak in 2008.⁵ As Figure 1 shows, there were 101 filings from January through the end of June of this year. If filings continue at the same rate over the second half of the year, there will be a total of 202 federal securities class action filings in 2010. That would represent a decline from the 221 filings observed in 2009, which in turn was less than the 248 filings in 2008.

A key factor contributing to the decline in overall filings was a drop-off in federal securities class action filings related to the global credit crisis. There were 17 credit crisis-related securities class actions filed in the first half of 2010; if that pace persists there will be 34 such cases filed in all of 2010. This would be considerably lower

than the 57 credit crisis-related class actions filed last year and less than a third of the 103 credit crisis-related filings in 2008. While the credit crisis continues to generate a substantial volume of litigation, this more often takes the form of state, local, derivative, ERISA, and other types of litigation, rather than federal securities class actions.⁶

A key factor contributing to the decline in overall filings was a drop-off in filings related to the global credit crisis.

Figure 1. **Federal Filings**
January 1, 1996 – June 30, 2010



Notes: Other Cases include IPO laddering, mutual fund market timing, and research analyst-related cases.

The issues, allegations, and entities involved in credit crisis-related federal securities class actions have changed over time. To take one example, in 2008 there were 22 cases filed involving auction-rate securities, following the failures of a number of auctions for these instruments in early 2008, whereas only two ARS-related cases were filed in the first half of 2010.

Standard filings have increased in the first half of 2010, and on an annualized basis would eclipse the number of standard filings in any year since 2005.

Credit crisis-related filings in 2010 have included class actions against the following entities: Countrywide Financial, alleging lax mortgage underwriting practices and misrepresentations of sufficiency of collateral and the appraisal practices used to support the underwritten mortgages; the Las Vegas Sands Corporation, alleging that a failure to access capital markets, due to the credit crisis and a weak liquidity position, was hidden from investors; and Goldman Sachs, related to alleged misrepresentations concerning marketing of certain collateralized debt obligations (CDOs). The Goldman Sachs matter also features, as a central element, an allegation that the company failed to disclose the receipt of a Wells notice from the SEC. On July 15, Goldman Sachs announced that it had agreed to pay \$550 million to settle the SEC action that prompted the private litigation, though the latter remains pending.

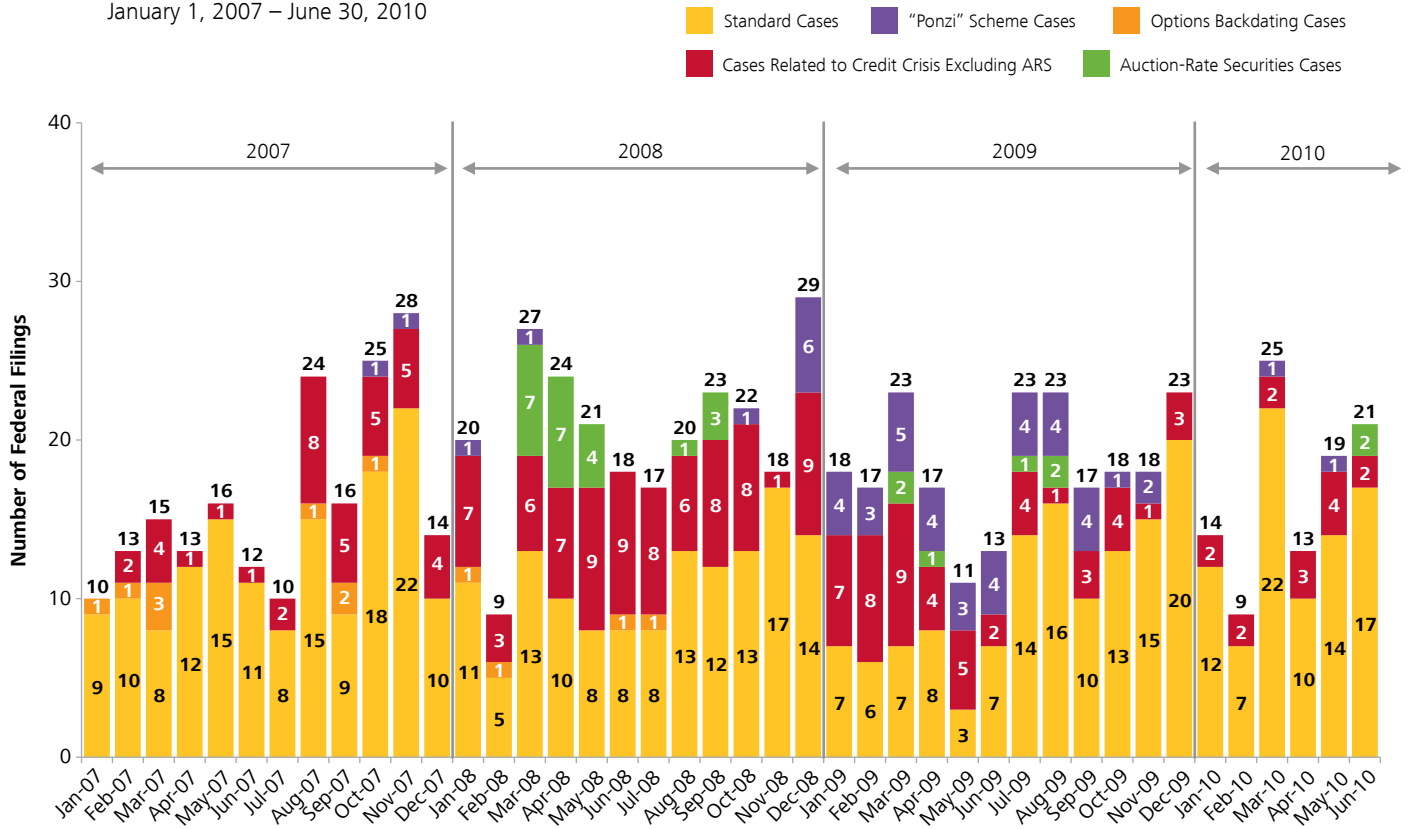
As discussed in more detail below, another change in credit crisis-related class action filings is that the median investor losses for credit crisis cases filed in the first half of 2010 were considerably lower than in previous years, and were in fact lower than median investor losses in non-credit crisis cases filed in the same period. This contrasts with prior years, in which median investor losses have consistently been higher—sometimes considerably so—in credit crisis cases than in other types of cases.

Class action filings stemming from Ponzi schemes, a significant source of filings in December 2008 and in 2009, declined sharply in the first half of 2010. Indeed, only two Ponzi scheme-related securities class actions have been filed so far this year, as compared to nine in 2008 and 38 last year.

Securities class actions involving exchange-traded funds continue to be filed in 2010, but at a slower rate than in 2009. Five ETF-related class actions were filed in the first half of 2010, as compared to 18 in 2009. ETF-related litigation thus far has mostly focused on leveraged and inverse ETFs, both of which are relatively new products. The first ETF-related case was filed in May 2009.⁷

Figures 1 and 2 break out “standard filings,” i.e., filings excluding those related to the credit crisis, Ponzi schemes, options backdating, and certain other categories of special interest.⁸ Standard filings increased in the first half of 2010, and on an annualized basis, would eclipse the number of standard filings in any year since 2005. Standard filings in 2010 have encompassed a variety of cases, including filings related to the oil spill in the Gulf of Mexico, filings alleging product defects (including, for example, cases relating to Toyota vehicle brake and accelerator pedal issues), a number of filings against companies in the life sciences and the technology sectors, and suits alleging breach of fiduciary duty, many of which relate to mergers and acquisitions.

Figure 2. **Federal Filings: One-Month Intervals**
January 1, 2007 – June 30, 2010



The slowdown in credit crisis-related securities class actions began around April of 2009. Filings stemming from Ponzi schemes declined sharply in the first half of 2010.

Figure 2 shows securities class action filings on a monthly basis. This graph helps pinpoint the timing of the slowdown in credit crisis-related securities class actions; it appears that this began around April 2009. In every month but one from March 2008 through March 2009, there were at least seven credit crisis-related filings,⁹ and there were on average more than nine credit crisis cases per month during this period. By contrast, from April 2009 through June 2010 there were no more than five credit crisis cases in any month, with an average of only about three such filings per month. The graph also indicates that the recent increase in standard filings began around the second half of 2009.

Figure 2 also illustrates that variability in monthly filings can be substantial. In the first half of 2010 there were between 9 and 25 filings per month, a slightly wider range than the 11 to 23 monthly filings in 2009.

Filings by Circuit

Over each of the previous four years, the Second Circuit, which encompasses New York, Connecticut, and Vermont, has had the most filings among the twelve US circuits. To a substantial degree, this is because credit crisis and Ponzi scheme filings have been concentrated in the Second Circuit. In the first half of 2010, however, the Ninth Circuit, which includes California and certain other Western states and territories, had the most securities class action filings. As Figure 3 shows, the 26 filings in the Ninth Circuit over this period edged out the 25 filings in the Second Circuit.

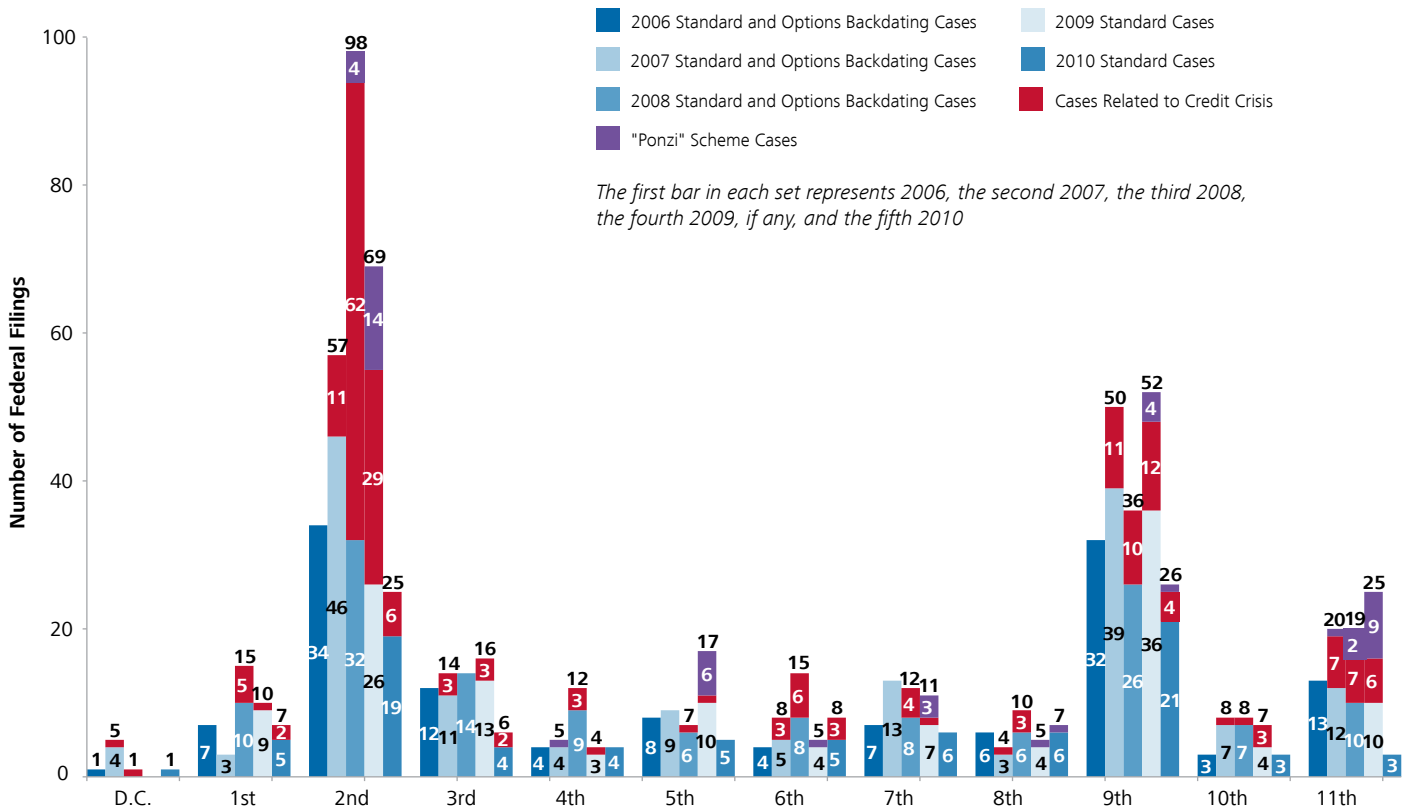
More credit crisis cases continue to be filed in the Second Circuit than in any other US circuit, including six of the 17 credit crisis-related federal securities class actions filed in 2010 to date. Most Second Circuit cases were filed in the Southern District of New York, which encompasses New York City, where the securities industry and major stock exchanges are based. At the same time,

Filings in the Ninth Circuit surpassed filings in the Second Circuit by a slight margin.

four credit crisis cases and one Ponzi scheme case have been filed in the Ninth Circuit so far this year, including filings against the Las Vegas Sands Corporation and Countrywide Financial.

Moreover, there were more standard filings in the Ninth Circuit (21) than in the Second Circuit (19) in the first half of 2010. Ninth Circuit filing included, for example, the suit against Toyota relating to reported vehicle brake and accelerator pedal issues. Overall, more than half of filings in the Ninth Circuit in the first half of 2010 were against companies in the finance or health technology sectors.

Figure 3. **Federal Filings by Circuit, Year, and Type of Case**
January 1, 2006 – June 30, 2010

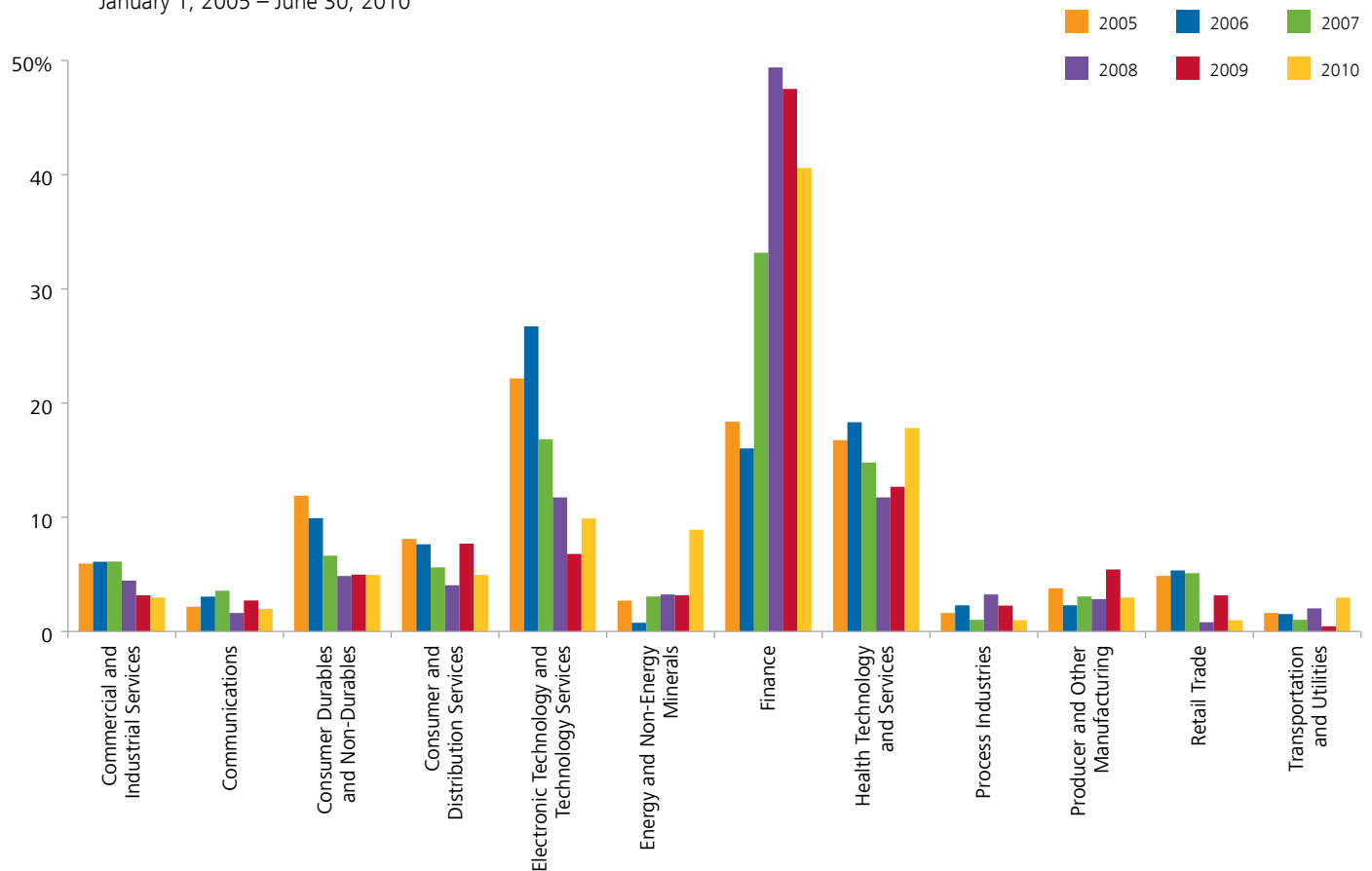


Filings by Sector

In the first half of 2010, as in 2008 and 2009, there were more federal securities class actions against companies in the financial sector than any other sector, though such suits have declined, both in absolute number and as a percentage of all filings, from their 2008 peak. As many filings against financial sector companies are related to the credit crisis, this decline is unsurprising. See Figure 4.

Comparing annualized 2010 filings to 2009, one of the largest percentage increases in the first half of 2010 was in filings against health technology firms; there was an uptick in filings against firms in this sector last year as well. There has also been a substantial increase this year in filings against firms in the electronic technology and technology services sector and the energy and non-energy minerals sector. Several of these filings involved allegations related to the Deepwater Horizon oil spill in the Gulf of Mexico.

Figure 4. **Percentage of Filings by Sector and Year**
January 1, 2005 – June 30, 2010



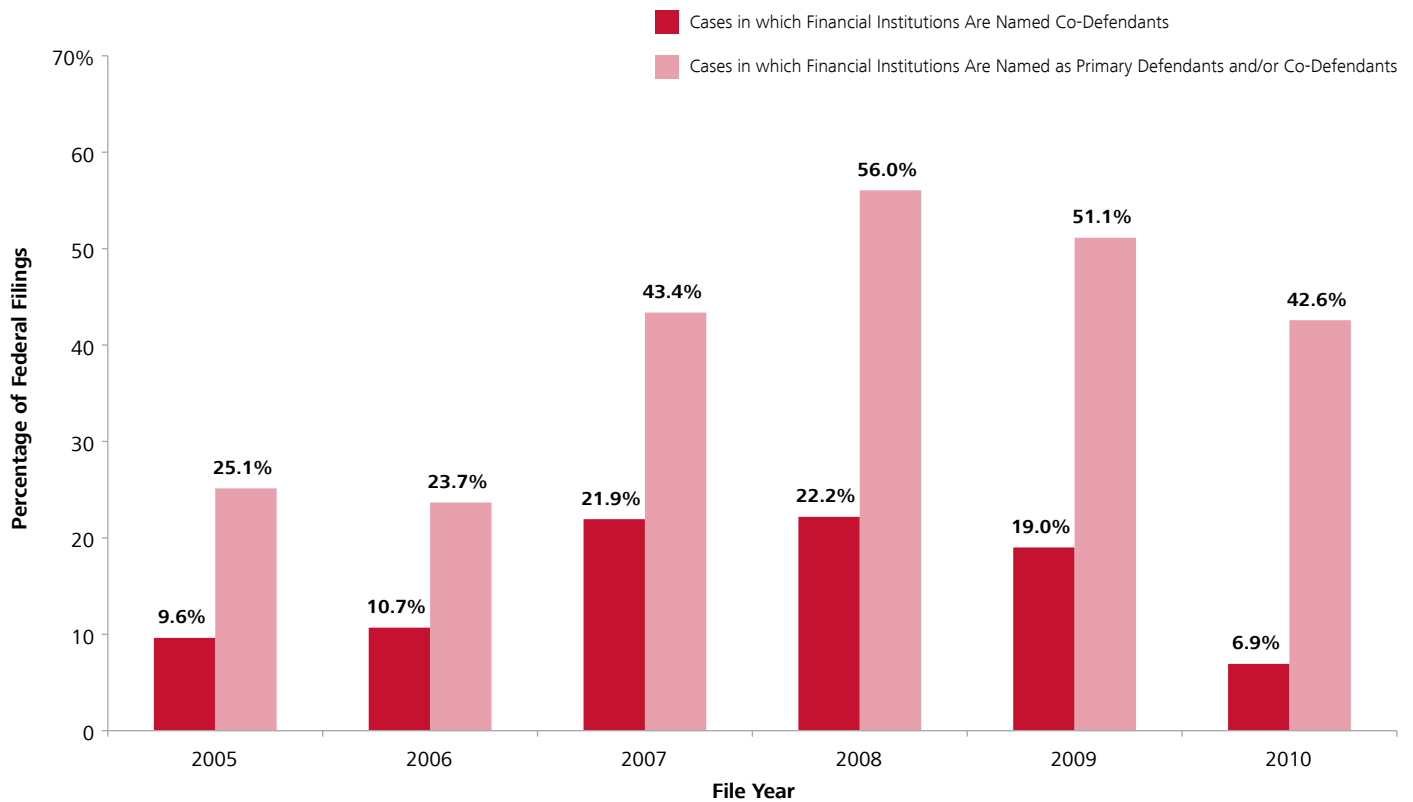
Notes: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

The largest percentage increase in filings in the first half of 2010 was against health technology firms, firms in the electronic technology and technology services sector and in the energy and non-energy minerals sector.

While the number of class actions against companies in the financial sector fell, the percentage of class actions naming a financial sector company as primary defendant remained considerably higher in the first half of 2010 than in years prior to the onset of the credit crisis.

As Figure 5 shows, from January through June 2010, 43 filings, about 43% of the total, named a finance sector company as the primary defendant or co-defendant, below the 56% peak in 2008 but still well above the 24% of class actions that were against firms in this sector in 2005-2006.

Figure 5. **Cases in which Financial Institutions Are Named Defendants as Percentage of All Federal Filings**
January 1, 2005 – June 30, 2010

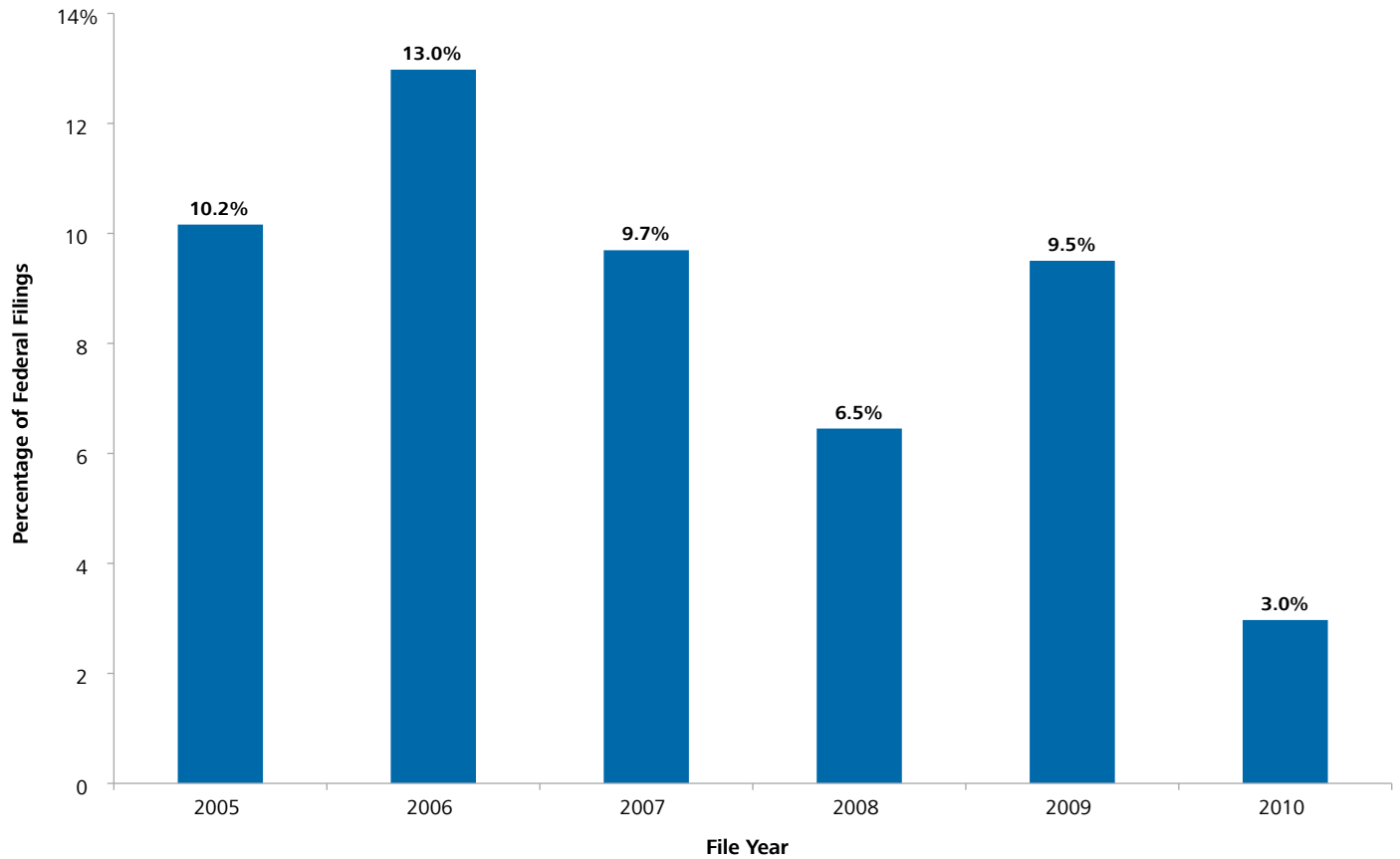


Notes: Audit firms are not designated as financial sector firms for purposes of this analysis.

A financial firm was named only as a co-defendant rather than primary defendant in just 6.9% of all cases in the first half of 2010.

The number of filings naming an accounting firm as a co-defendant experienced a large drop this year.

Figure 6. **Cases in which Accounting Firms Are Named Co-Defendants as Percentage of All Federal Filings**
January 1, 2005 – June 30, 2010



At the same time, a financial firm was named only as a co-defendant rather than primary defendant in just 6.9% of all cases in the first half of 2010. This proportion is below even the levels seen prior to the onset of the credit crisis. The number of filings naming an accounting firm as a co-defendant has also experienced a large drop this

year. As Figure 6 shows, in the last five years that number has ranged from a low of 6.5% in 2008 to a high of 13% in 2006, while in the first half of 2010 only 3% of filings named an accounting firm as a co-defendant. This is, in part, due to a lower number of filings alleging earnings manipulation.

Filings by Defendant's Country of Domicile

In the first half of 2010, 16 filings, or 15.8% of all cases filed, named a foreign-domiciled company as the primary defendant. Since January 1996 there have been a total of 341 federal securities class action filings against foreign primary defendants. Figure 7 shows federal filings against foreign-domiciled companies by year and geographic region.

Figure 7. **Federal Filings against Foreign Companies**
January 1, 1996 – June 30, 2010

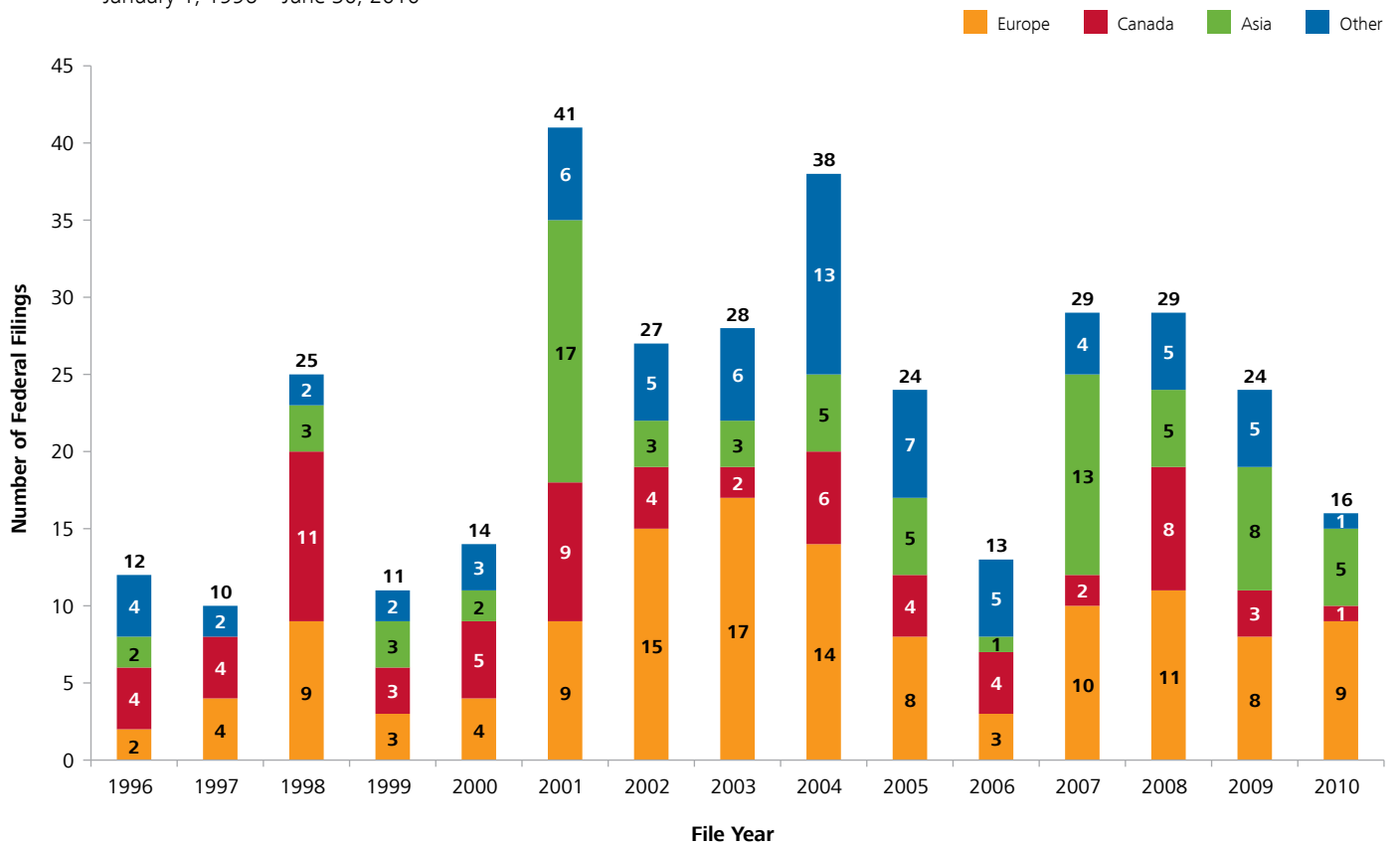
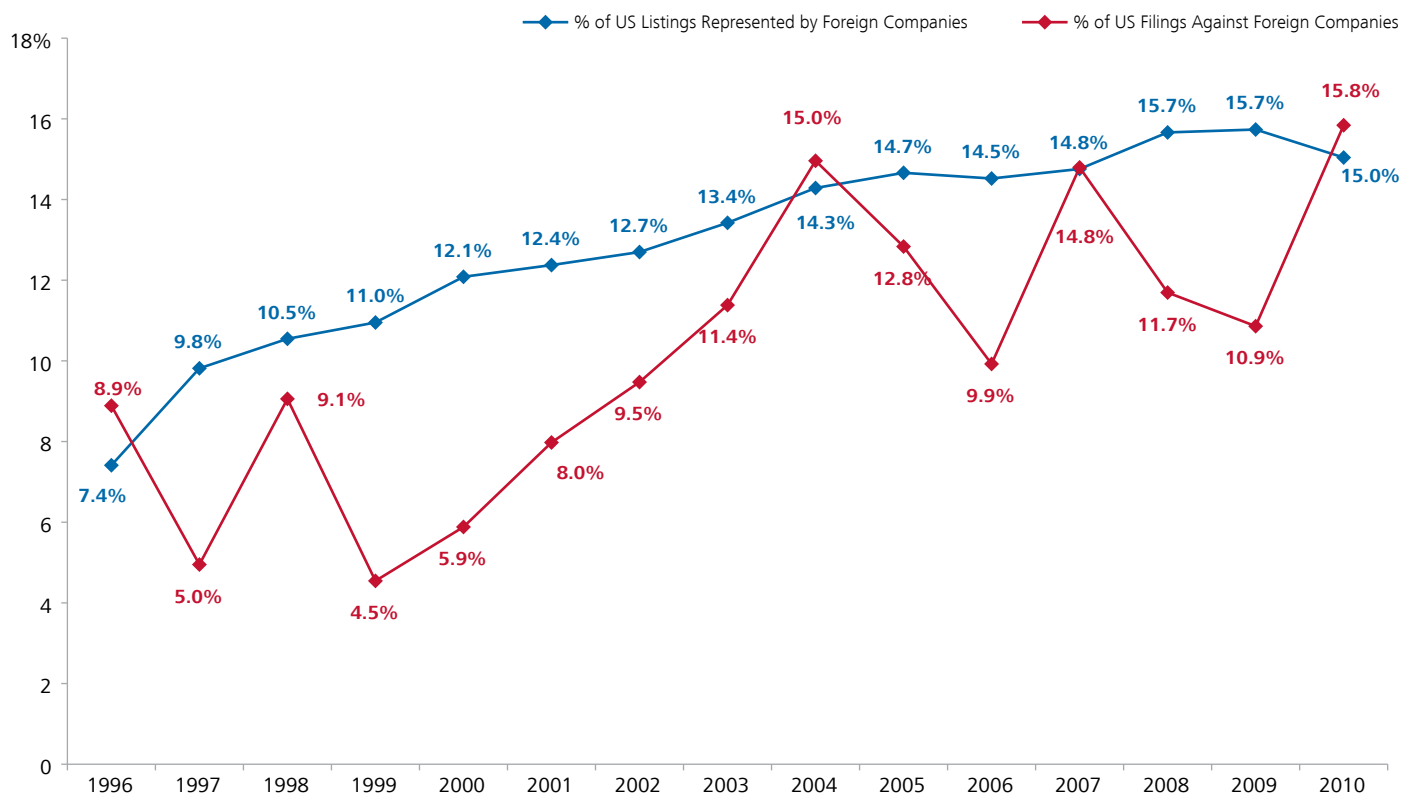


Figure 8. **Proportion of Federal Filings and Listed Companies that Involve Foreign Issuers**

January 1, 1996 – June 30, 2010

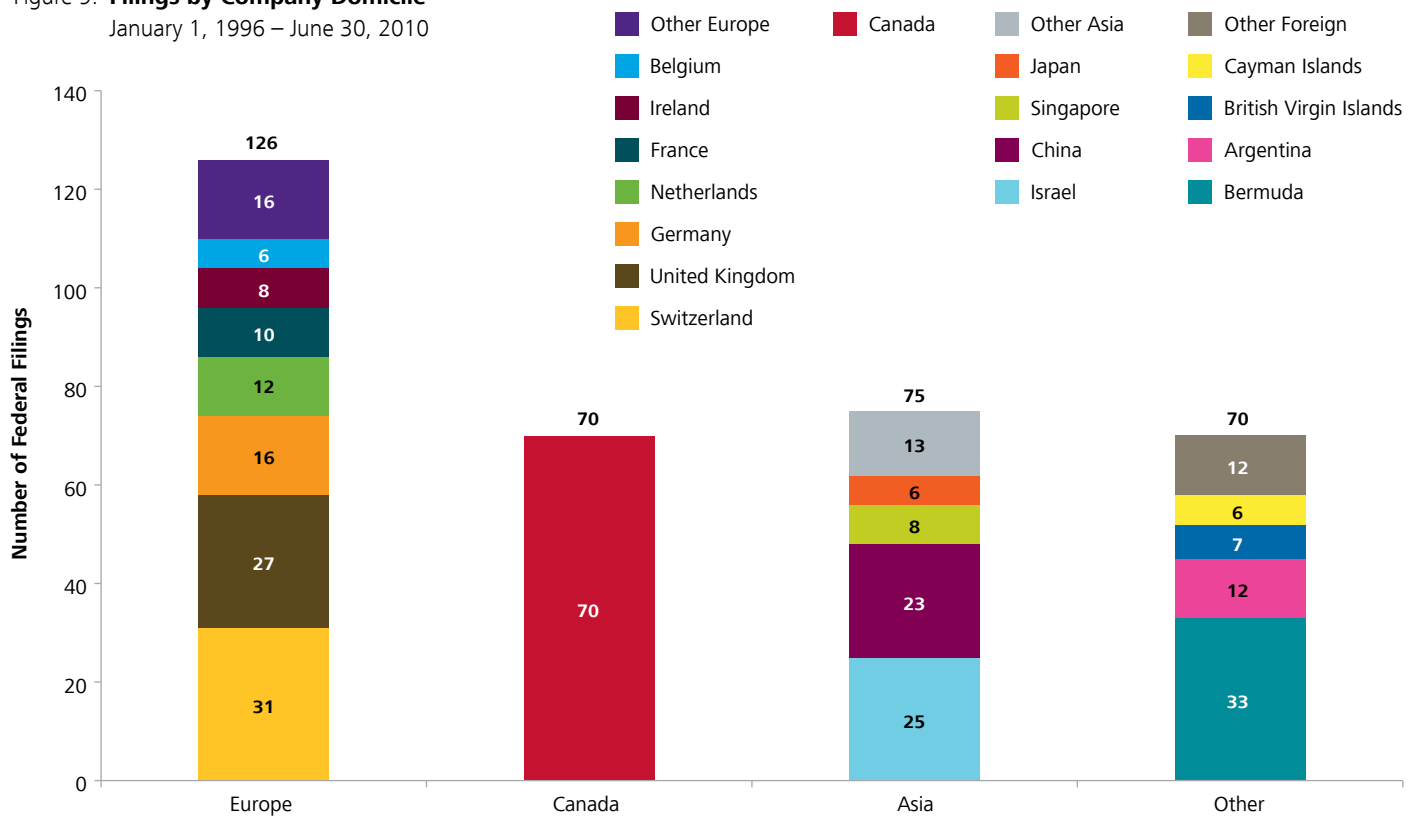


The 15.8% of filings naming a foreign company as a defendant exceeds the prior peak of 15.0% in 2004.

The 15.8% of filings naming a foreign company as a defendant exceeded the prior peak of 15.0% in 2004. See Figure 8. Moreover, it is only the third time since 1996 that the proportion of filings against foreign companies was higher than the proportion of foreign companies in US stock listings, indicating that, in the first half of 2010, foreign companies were sued more often than their proportion as part of the general population of US listed stocks would suggest.

Since 1996, Canadian companies have been the most frequently named of any individual country, with 70 filings total. See Figure 9. Companies domiciled in Europe accounted for 126 filings and 75 filings were against companies domiciled in Asia. Of the European companies sued, Swiss companies accounted for 31 filings and UK companies accounted for 27 filings. Of companies included in the Asia category, those domiciled in Israel have been named as a primary defendant in 25 federal securities class actions and Chinese companies accounted for 23 filings. (Note that some of the foreign companies in Figure 9 are domiciled in “tax haven” jurisdictions such as Bermuda.)

Figure 9. **Filings by Company Domicile**
January 1, 1996 – June 30, 2010

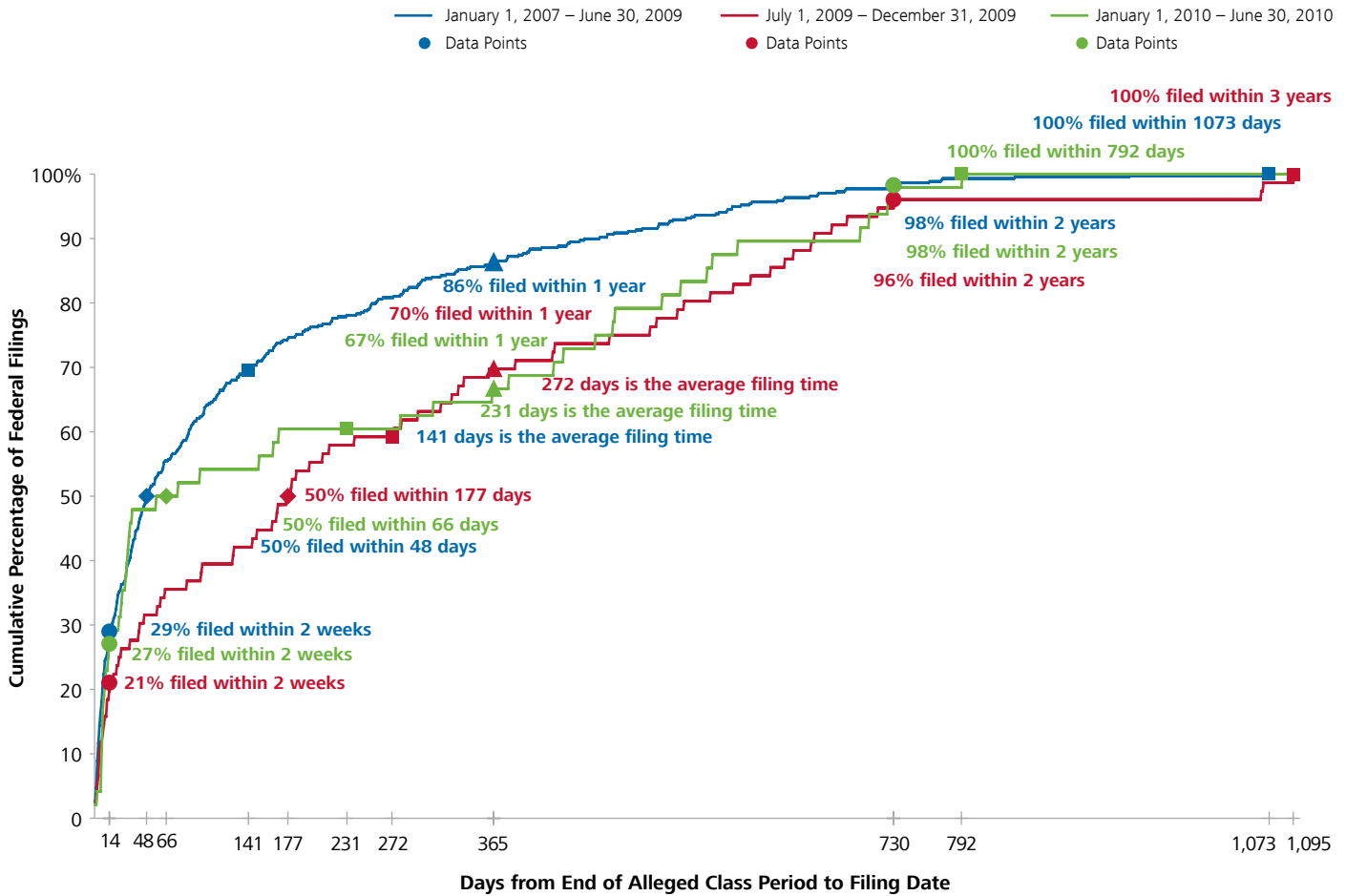


Since 1996, Canadian companies have been the most frequently named [foreign-domiciled defendants], with 70 filings total.

It remains to be seen what effect the Supreme Court’s recent decision in *Morrison v. National Australia Bank* will have on filings against non-US companies. Arguably, the decision makes it more difficult to bring a successful action under US securities laws in connection with purchases of securities made outside the US. One source of uncertainty about the decision’s effect relates to whether it will ultimately be reversed by legislation; as discussed further below, the Dodd-Frank Act includes provisions that open the door to potentially expanding the extraterritorial reach of US securities class action litigation, which would restore certain investors’ ability to bring claims that may be barred by the *Morrison* decision.

A look at recent filings against foreign companies highlights characteristics of the kinds of cases the *Morrison* decision may affect going forward. From January 1, 2007 through June 30, 2010, there were 98 federal securities class actions filed against companies domiciled outside the US, about 13% of total filings during this period. In more than half of these cases, investors who purchased or sold securities on a non-US market were explicitly or implicitly included in the class definition set out in the complaint. The *Morrison* decision may limit such investors’ ability to bring a claim under US securities laws.

Figure 10. **Time to Filing of First Complaint**



Notes: This analysis excludes cases where the number of days from the end of an alleged class period to the first filing date is more than 1,095 days, as well as cases without a clear end of class period date specified in the complaint.

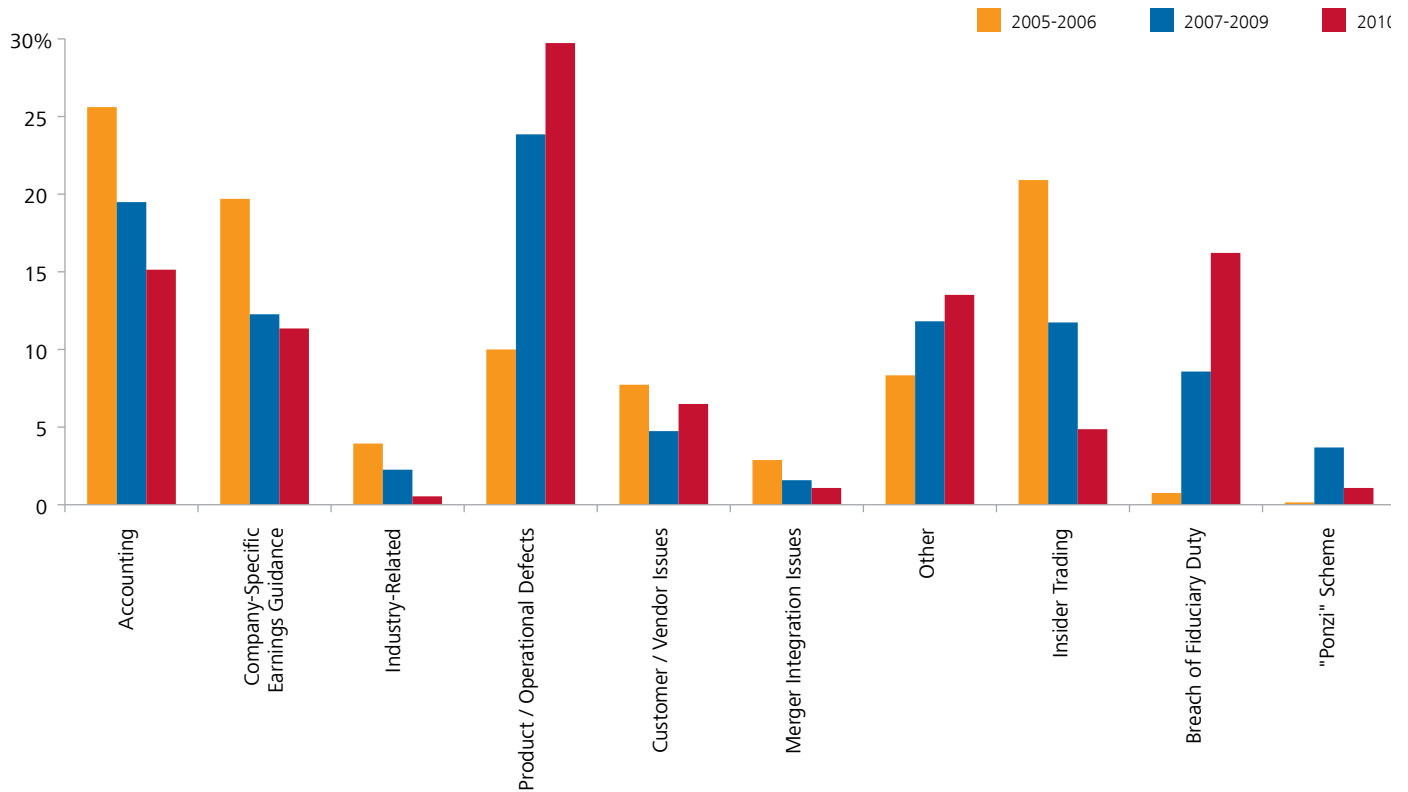
Time to File

For cases filed in the first half of 2010, there was a substantial decline in the average time to file, as compared to the second half of 2009. The decrease in the average number of days between the end of the class period and the filing of a complaint appears to represent a partial reversion to the historical average after a recent increase.

Over 1996-2006, the average time to file was 135 days (about four and a half months), with 32% of all cases filed in two weeks, half of all cases filed within 49 days, 92% of cases filed within a year, and all but 2% of all filings occurring within two years of the end of the class period alleged in the complaint. Over the period from early 2007 to mid-2009, the picture was similar, with an average time to file of 141 days.¹⁰ See Figure 10.

For filings in the second half of 2009, however, there was a considerably longer lag between the end of the class period and the filing date. The average time to file rose to 272 days—approximately nine months—for cases filed over that period. Moreover, half of all cases filed between July and December 2009 were filed after 177 or more days had elapsed from the end of the class period, more than triple the median lag for cases filed from January 1996 through December 2006. One theory that may explain this is that the plaintiffs’ bar, having focused in recent years on filing cases related to the credit crisis, had developed a backlog of other types of cases and turned to them in the second half of 2009, as credit crisis-related class actions waned.

Figure 11. **Allegations in Federal Filings**
January 1, 2005 – June 30, 2010



The recent upward trend in time to file began to reverse in the first half of 2010. The average time to file for the first half of 2010 was 231 days, still above the pre-credit crisis average, but lower than in the second half of 2009. Moreover, half of all filings so far this year were made within 66 days of the class period end. If the “catch-up” theory is valid, the average time to file may be expected to fall even further going forward.

On the other hand, an April 2010 US Supreme Court decision,¹¹ holding that a securities class action against Merck was not time-barred due to the PSLRA statute of limitations, may be relevant in future cases where the statute of limitations is at issue, and may allow additional filings of certain cases with a long lag between the end of the class period and the filing date.

Trends in Allegations¹²

As described earlier, the percentage of cases naming an accounting firm as a co-defendant has continued to decline. Consistent with observing

fewer filings against accounting firms as co-defendants, filings with accounting and company-specific earnings guidance allegations, have also declined since the pre-credit crisis period. There are also fewer insider trading allegations, as a smaller proportion of complaints filed this year have cited insider sales in support of scienter allegations. See Figure 11.

The number of complaints alleging product and operational defects has risen. In the first half of 2010, this category of allegations occurred more frequently than any other. The product and operational defects category encompasses both traditional, tangible goods and financial products like ETFs and CDOs. However, allegations specifically involving ETFs and other financial products have declined since last year, and the growth in the product and operational defects category reflects mostly traditional product and operational defect allegations, such as those relating to the oil spill in the Gulf of Mexico or Toyota vehicle recalls.

There has also been a notable increase in the filings of cases with breach of fiduciary duty allegations. Out of 30 such cases filed in the first half of this year, 16 involved a defendant in the financial industry; of these financial cases, two involved Ponzi scheme allegations and four involved allegations relating to mutual funds.

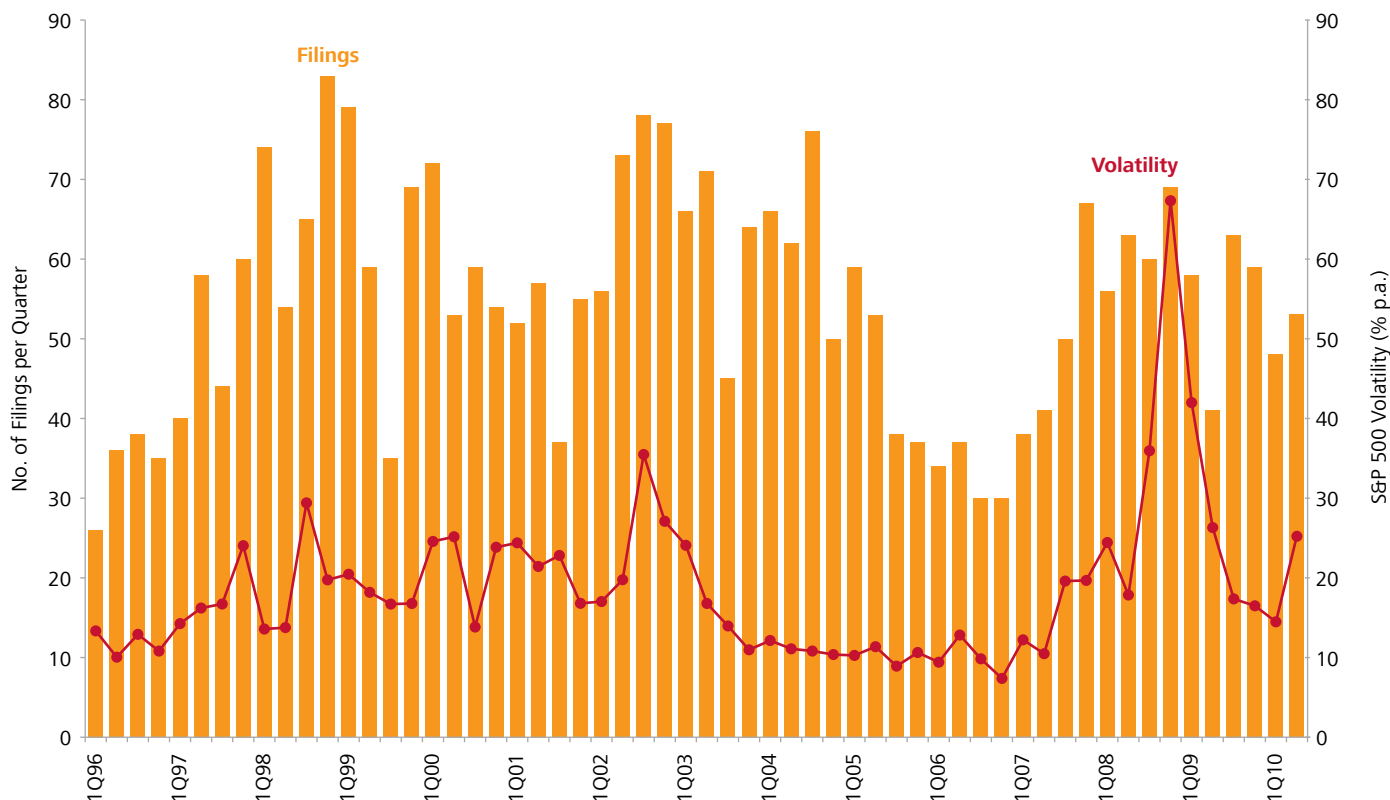
Consistent with the historical average since 2005, almost half of all breach of fiduciary duty cases in 2010 related to pricing in a merger or an acquisition. However, cases alleging failure to represent investor interests have grown as a percent of all cases in the breach of fiduciary duty category. In 2010, 36% of cases alleging breach of fiduciary duty were of this type, compared to a historical average of approximately 19%. On the other hand, only 5% of cases alleging breach of fiduciary duty in the first half of 2010 involved allegations of a Ponzi scheme. This is down from the 24% of such cases in 2008 and 34% in 2009.

Filings and Volatility

We continue to monitor the link between stock market volatility and the number of filings. Historically, filings activity has correlated positively with market volatility, as measured by the annualized standard deviation of returns for the S&P 500 index.¹³ Figure 12 illustrates that correlation. Volatility has been higher over the past three years than previously, and that has been accompanied by an increase in the overall number of filings compared to the 2005-2006 period.

The strength of that relationship is somewhat weaker after incorporating the four most recent quarters of data (the second half of 2009 and the first half of 2010) but remains statistically significant.

Figure 12. **Quarterly Federal Filings vs. Volatility of the S&P 500 Index**
January 1, 1996 – June 30, 2010



Notes: Filings exclude IPO laddering cases. The S&P 500 volatility is calculated as the standard deviation of daily returns each quarter, annualized by a factor of the square root of 252.

Trends in Resolutions

Resolution of Cases by Filing Year

A majority of the federal securities class actions filed and resolved from 1996 to the present—about 60%—have settled. Nearly all of the remainder have been dismissed.¹⁴ Only a handful of securities class actions have gone to trial, and even fewer have resulted in a verdict at trial.

While many cases are resolved relatively quickly others take years to reach a final outcome. In order to get a sense of how cases resolve over the long term we have examined the cohort of 238 cases filed in 2000.

Of the 238 filings in 2000, 61.8% have already fully settled or partially settled (meaning at least one of the defendants in the case has settled), while 35.7% have been dismissed and remain dismissed. Only six of the cases filed in 2000, about 2.5%, remain unresolved; these are either still pending or have been abandoned by plaintiffs. Four of the cases filed in 2000 went to trial, but all of these settled during trial, before a verdict was reached (see more on securities class action trials below).

On average, dismissals happen more quickly than settlements.

The cohort of cases filed in 2000 indicates that, on average, dismissals happen more quickly than settlements: for cases that were ultimately dismissed, the average time from filing until dismissal was 1.8 years. For settled cases, the average time from filing until settlement was 3.5 years. On average, resolved cases took 2.5 years to reach a resolution, ranging from 12 days to 9.1 years.

We also examined resolutions for cases filed subsequent to 2000. As would be expected, the more recent the year, the lower the proportion of resolved cases and the higher the ratio of dismissals to settlements. See Figure 14. This pattern reflects both the fact that settlements generally take longer than dismissals and that some dismissals without prejudice are ultimately re-filed or some dismissals with prejudice are reversed on appeal.

Figure 13. **Status of 238 Federal Securities Class Actions Filed in 2000**

As of June 30, 2010

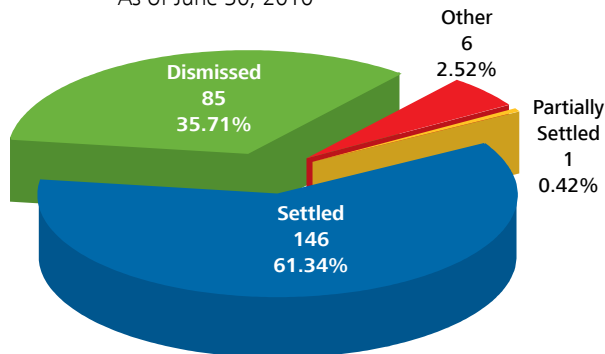
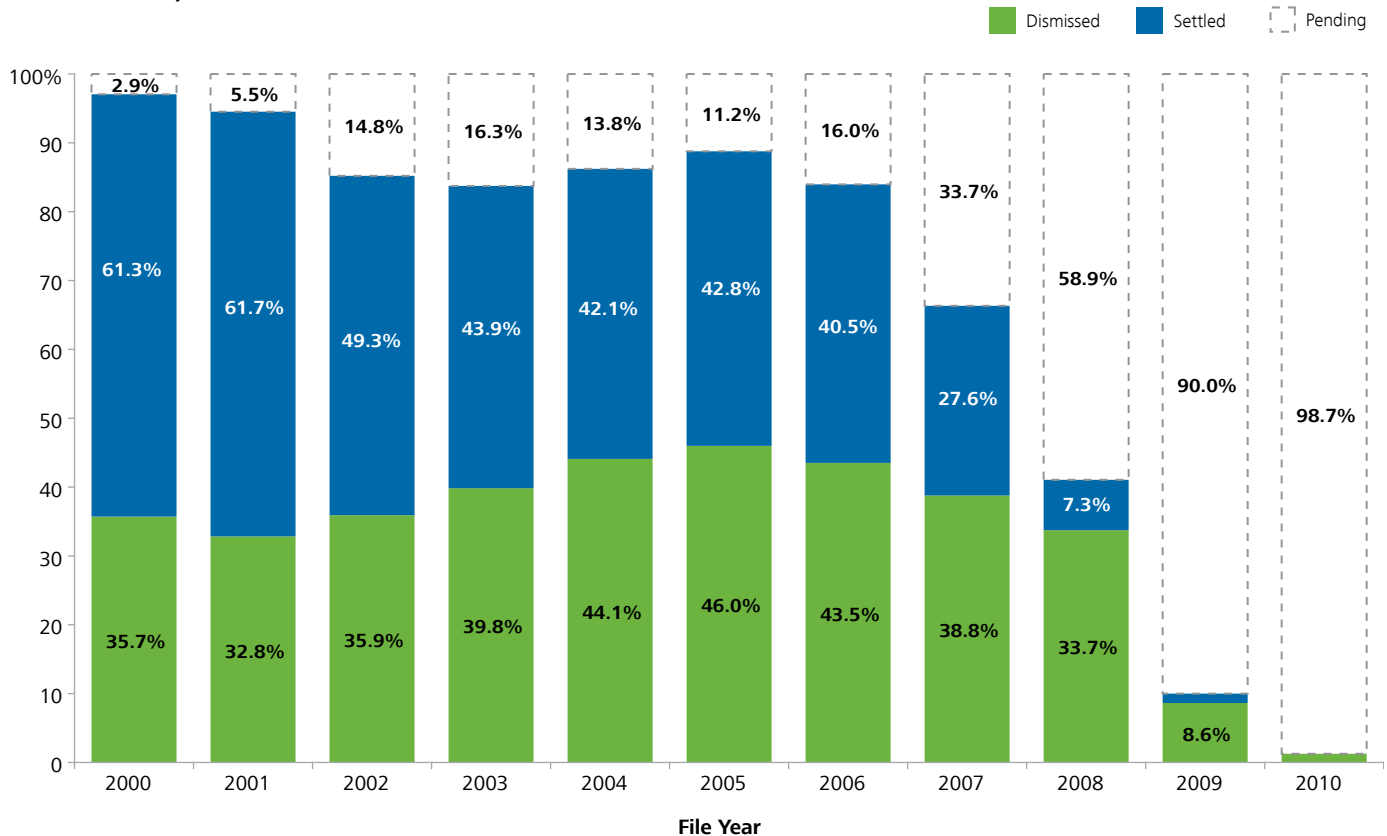


Figure 14. **Status of Cases as Percentage of Federal Filings by File Year**
January 1, 2000 – June 30, 2010



Notes: Filings exclude IPO laddering cases.

Among cases filed in 2009, 90% remain pending, and of the cases that were resolved, dismissals outnumber settlements six to one. Examining cases filed five years ago, the number of settlements approximately equals the number of dismissals. Finally, as we saw above, there are nearly two settlements for every dismissal among the cohort of cases filed in 2000.

Credit crisis-related cases are only just beginning to be resolved: most of these cases were filed in 2007-2009, with only 17 filed in the first half of 2010, as described above. As Figure 15 shows, over two-thirds of credit crisis cases are still pending. Nonetheless, as of June 30, out of the 215 credit crisis-related federal securities class actions, 12 have settled and almost a quarter have been dismissed.

Figure 15. **Status of 215 Credit Crisis-Related Federal Securities Class Actions**
Filed January 1, 2007 – June 30, 2010

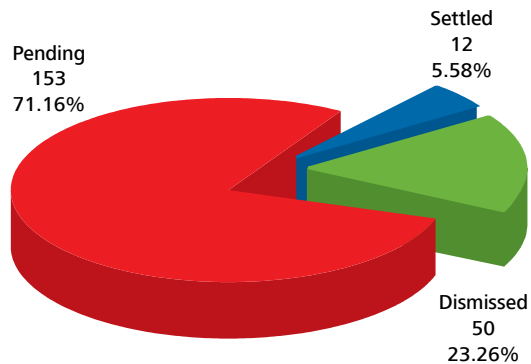
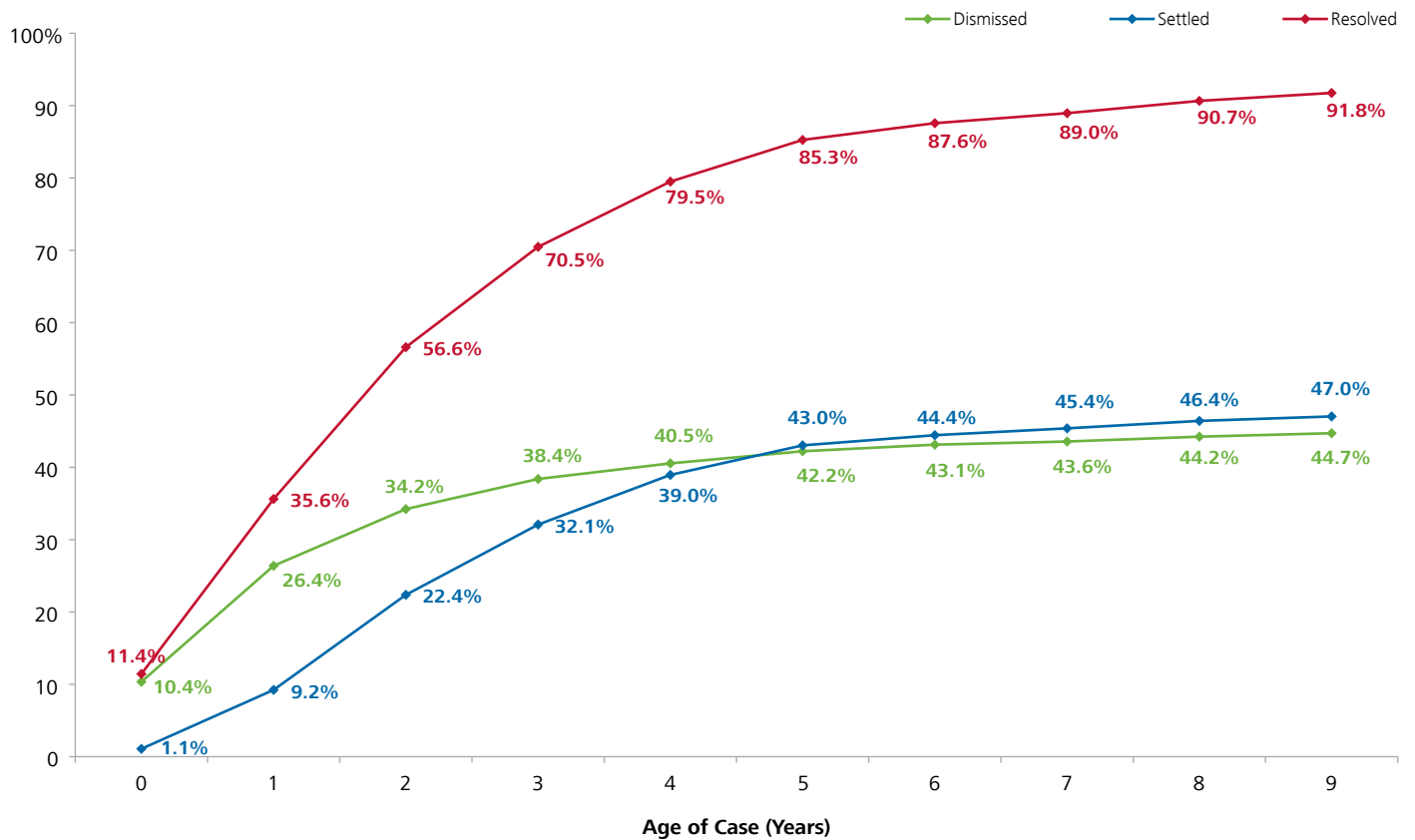


Figure 16. **Cumulative Percentage of Cases Dismissed, Settled, and Resolved**
Filed after January 1, 2000 and Resolved June 30, 2010 or before



Notes: Filings exclude IPO laddering cases.

As of five years after filing and beyond, there are more settlements than dismissals.

Resolution by age of case

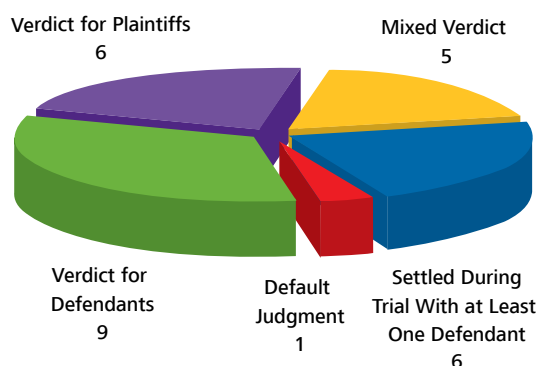
Another way to illustrate patterns in the timing of resolutions is to look at the cumulative percentage of cases settled with all defendants, or dismissed, over the time period elapsed since filing. Figure 16 shows these patterns for cases filed from January 1, 2000 to June 30, 2010.

We find that, within a year of filing, 26.4% of cases have been dismissed and 9.2% have settled. However, within five years of filing we find that there is an approximately equal incidence of cases being settled and dismissed. Consistent with the results in Figure 14, the graph illustrates that dismissals generally happen more quickly than settlements, so at the four-year mark and earlier there are more dismissals than settlements, and as of five years after filing and beyond there are more settlements than dismissals.

Dismissals

In our mid-year 2009 study, we observed that cases have been dismissed more quickly following the US Supreme Court's decision in *Dura v. Broudo* in 2005.¹⁵ This result continues to hold after incorporating the cases that have been resolved over the past 12 months.

Figure 17. **Status of 27 Shareholder Class Actions That Went to Trial After PSLRA**
As of June 30, 2010



Credit crisis cases filed from February 2007 through June 2010 have been dismissed at a slightly lower rate (23.3%) than other types of cases (25.2%). Also, credit crisis cases that are dismissed have taken slightly longer to be dismissed than other types of cases: on average, the time from filing to dismissal has been about 15 months for credit crisis cases, as compared to about 13 months for other types of cases filed over the same period.

Securities class action trials

In general, very few securities class action suits go to trial. Indeed, over 3,400 cases have been filed since the passage of the PSLRA, and only 27 have gone to trial.¹⁶ Even fewer suits end in a verdict at trial, as some cases settle while a trial is underway. Details of the 27 cases that have gone to trial are presented in Table 1, including the Circuit in which the case was filed, the year the case was initially filed, and the year it went to trial. Nine of these cases resulted in a verdict for defendants, six resulted in a verdict for plaintiffs, five ended with a mixed verdict, including one which ended in a hung jury, and one case resulted in default judgment. As noted previously, six cases that were tried settled during trial, before a verdict was reached. See also Figure 17.

Table 1. **Twenty-Seven Securities Class Actions That Went to Trial after PSLRA**

Case	Federal Circuit	File Year	Trial Year ¹
I. Verdict for Defendants (9)			
1 American Mutual Funds (Fee Litigation) ²	9	2004	2009
2 American Pacific Corp. ³	9	1993	1997
3 Biogen Inc.	1	1994	1998
4 Everex Systems Inc. ⁴	9	1992	2002
5 Health Management, Inc.	2	1996	1999
6 JDS Uniphase Corp.	9	2002	2007
7 NAI Technologies, Inc.	2	1994	1996
8 Thane International, Inc. ⁵	9	2003	2009
9 Tricord Systems, Inc.	8	1994	1997
II. Verdict for Plaintiffs (6)			
1 Apollo Group, Inc. ⁶	9	2004	2010
2 Claghorn / Scorpion Technologies, Inc.	9	1998	2002
3 Computer Associates International, Inc.	2	1991	2000
4 Helionetics, Inc.	9	1994	2000
5 Real Estate Associates, LP	9	1998	2002
6 U.S. Banknote Corp. ⁷	2	1994	1997

Table 1. **Twenty-Seven Securities Class Actions That Went to Trial after PSLRA (continued)**

III. Mixed Verdict (5)			
1 Clarent Corp. ⁸	9	2001	2005
2 Digitran Systems, Inc. ⁹	10	1993	1996
3 ICN Pharmaceuticals, Inc. ¹⁰	2	1987	1996
4 Household International, Inc. ¹¹	7	2002	2009
5 Vivendi Universal, S.A. ¹²	2	2002	2010
IV. Settled During Trial (6)¹³			
1 AT&T	3	2000	2004
2 First Union National Bank / First Union Securities / Cypres Funds	11	2000	2003
3 Globalstar Telecommunications, Ltd.	2	2001	2005
4 Heartland High-Yield / Short Duration High Yield Municipal Bond Funds	7	2000	2005
5 WorldCom	2	2002	2005
6 Safety-Kleen Corp. (Bondholders Litigation) ¹⁴	4	2000	2005
V. Default Judgment (1)			
1 Equisure Inc. ¹⁵	8	1997	1998

Notes: Until otherwise noted, all these cases went to a jury trial. Data are from case dockets.

¹ Trial year represents a year in which a jury trial begun or a year of a latest development in a case.

² Judgment for defendants entered December 28, 2009 after a bench trial lasting from July 28, 2009 to August 7, 2009.

³ On November 27, 1995, the US District Court granted in part the Company's motion for summary judgment ruling that the Company had not violated the federal securities laws in relation to disclosure concerning the Company's agreements with Thiokol. The remaining claims, which related to allegedly misleading or inadequate disclosures regarding Halotron, were the subject of a jury trial that began in December 1995 and ended on January 17, 1996. The jury reached a unanimous verdict that neither the Company nor its directors and officers made misleading or inadequate statements regarding Halotron. Verdict was appealed, but on June 5, 1997 affirmed by the 9th Circuit Court of Appeals.

⁴ 1998 verdict for defendants was reversed and remanded by the 9th Circuit Court of Appeals; 2002 retrial again yielded a verdict for defendants.

⁵ On June 10, 2005 bench trial verdict dismissed the case. Thereafter, plaintiffs filed a notice of appeal from the trial verdict in favor of the defendants. On November 26, 2007, the US Court of Appeals of the 9th Circuit issued an Opinion reversing and remanding the action back to District Court with instructions to enter judgment in favor of the plaintiffs, to address loss causation, and to conduct further proceedings consistent with this opinion. On December 5, 2008, the defendants filed a Motion for Judgment On Loss Causation and a Motion for Judgment On Lack Of Control Person Liability And Good Faith Defenses. On March 17, 2009, the Court granted the defendants' Motion for Judgment On Loss Causation but denied the Motion for Judgment On Lack Of Control Person Liability And Good Faith Defenses. Final Judgment on behalf of the defendants was entered on March 25, 2009.

⁶ On January 16, 2008 a federal jury found Apollo Group Inc. and certain former officers liable for securities fraud and ordered them to pay approximately \$280 million to shareholders. On August 8, 2004, the District Court overturned the jury verdict; Federal Judge James A. Teilborg's order vacated the judgment and entered judgment in defendants' favor. Following the dismissal, a notice of appeal was filed on August 29, 2008. On June 23, 2010, the United States Court of Appeals for the 9th Circuit reversed the District Court's post-trial ruling and remanded the case with instructions that the District Court enter judgment in accordance with the jury's verdict.

⁷ Judge subsequently vacated the jury verdict and approved a settlement.

⁸ Chairman of Clarent liable, Ernst & Young not liable.

⁹ A September 30, 1996 to October 24, 1996 jury trial resulted in a mixed verdict, with liability for Digitran Systems, Inc. and its former president, but not liable verdict for other individual defendants and the auditor, Grant Thornton.

¹⁰ Hung jury.

¹¹ The jurors were asked to make specific findings with respect to 40 allegedly false and misleading statements. The jury found in favor of the defendants with respect to 23 of the statements, but the jury found in favor of the plaintiffs with respect to 17 of the statements.

¹² The trial started October 5, 2009. On January 29, 2010 the jury returned a verdict against the company on all 57 of the plaintiffs' claims. However, the jury also found that the two individual defendants, former Vivendi CEO Jean Marie Messier and former Vivendi CFO, were not liable.

¹³ At least one defendant settled after the trial began, but prior to judgment.

¹⁴ Some director-defendants settled during the trial. Default judgment against CEO and CFO who failed to show up for trial.

¹⁵ Default judgment against Equisure Inc. which failed to show up for trial.

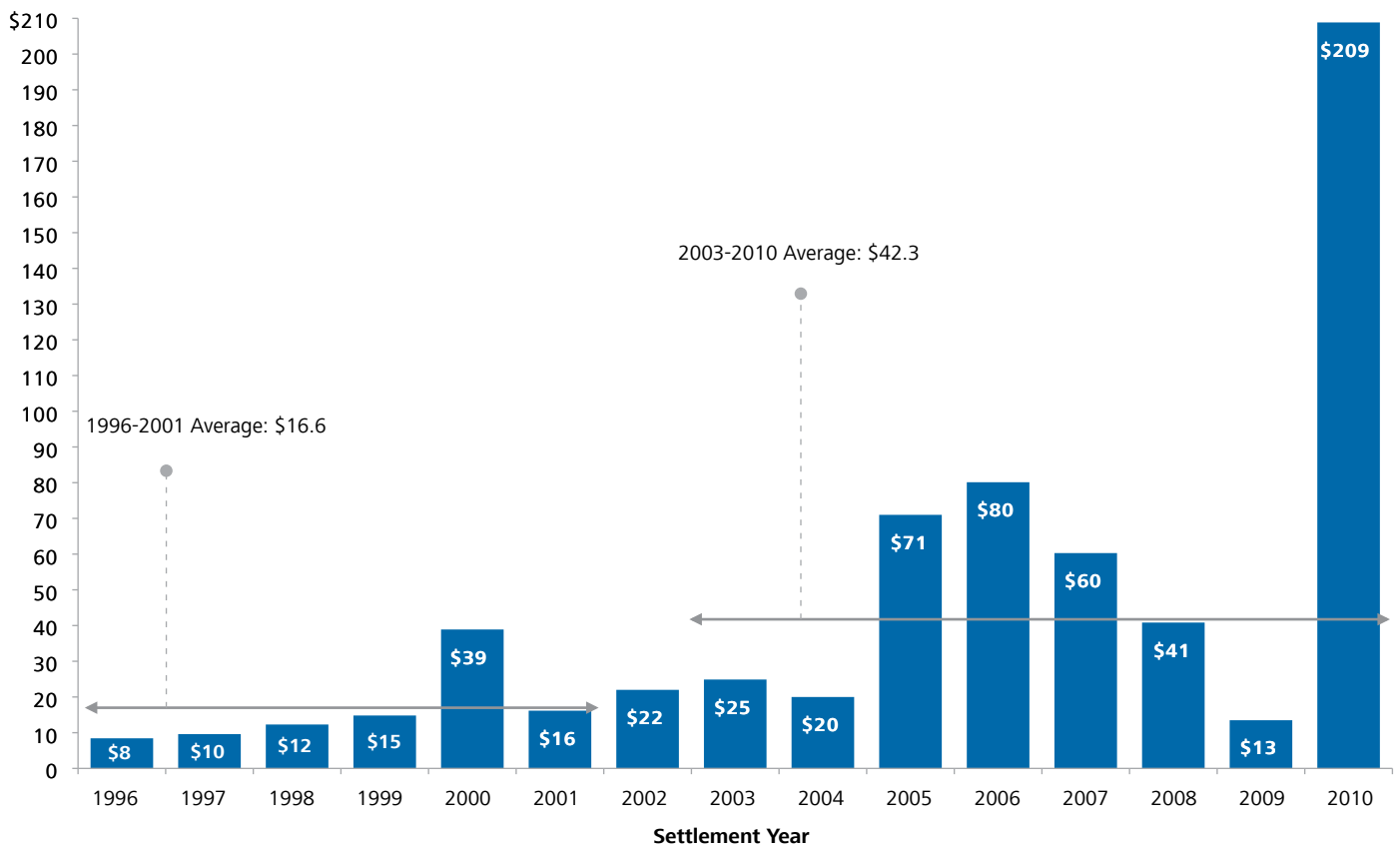
While over 3,400 cases have been filed since the passage of the PSLRA, only 27 have gone to trial.

There were notable developments in two securities class action trials in the first half of 2010. On January 29, 2010, a jury found Vivendi Universal liable on all 57 of plaintiffs' claims. The two individual defendants in the case were not found liable, however. Reports circulating at the time stated that damages could be as high as \$9 billion,¹⁷ although the US Supreme Court's subsequent *Morrison* decision, described above, might potentially affect that amount, as the majority of trading in Vivendi shares during the class period took place outside the US. Another significant development occurred on June 23, 2010, when the US Court of Appeals for the Ninth Circuit restored a \$277.5 million jury verdict in the Apollo Group securities litigation; the verdict had earlier been set aside by a district court.

Settlements¹⁸

As noted above, the most common resolution for a securities class action is a settlement. The average settlement in the first half of 2010 was a record \$209 million, well above the previous record high of \$80 million in 2006. See Figure 18. However, NERA assigns each settlement to the year in which it was approved by the court and, for settlements involving multiple defendants, we assign the settlement to the year in which the final defendant's settlement was approved (or the most recent defendant, if not all defendants have reached a court-approved settlement). The \$7.2 billion settlement in the Enron class action, approved by the court in February 2010, is included in the 2010 average and has a substantial impact on that number.

Figure 18. **Average Settlement Value (\$MM), All Cases**
January 1, 1996 – June 30, 2010

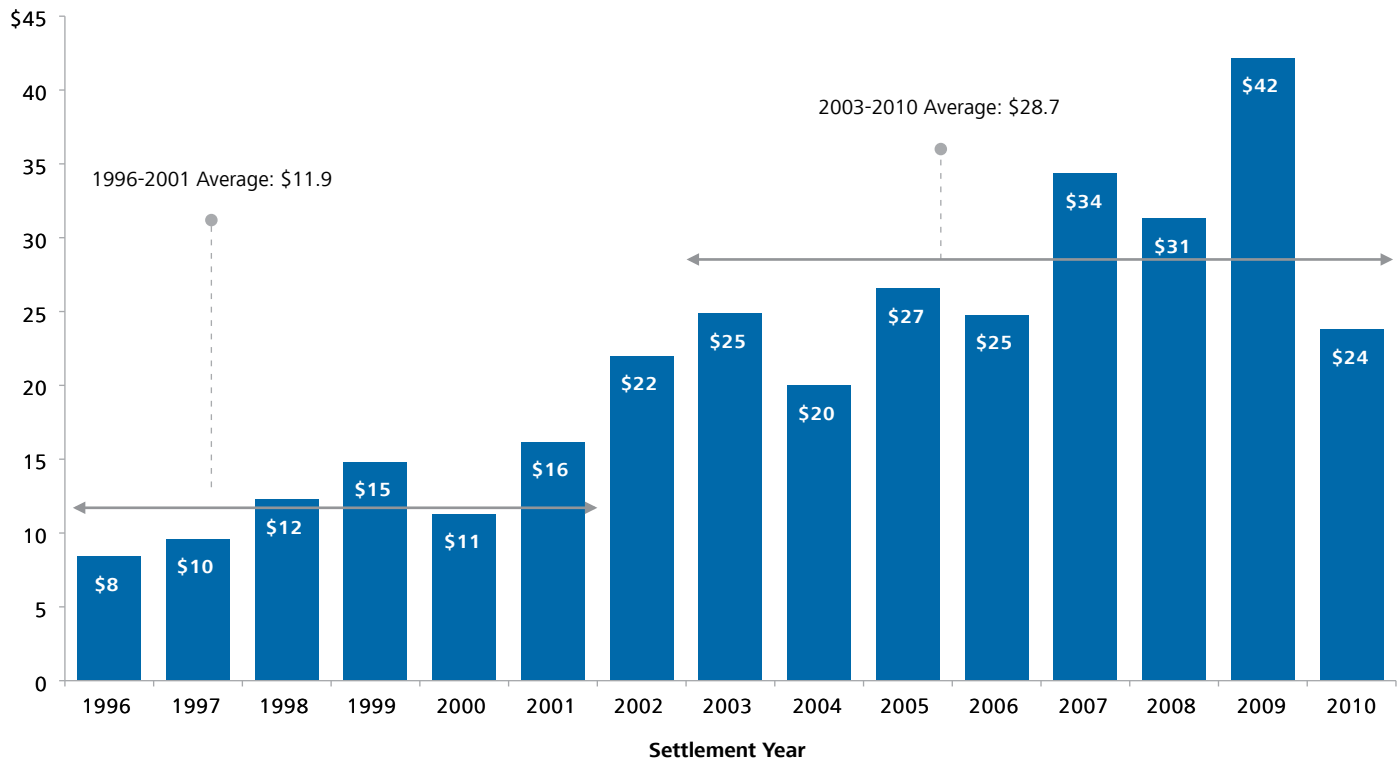


Notes: Settlements include IPO laddering cases.

The average settlement in 2010 is \$24 million, which is lower than the average settlement excluding outliers in other recent years.

One alternative way of tracking trends in settlement size is to calculate the average excluding “outlier” settlements—both those over \$1 billion and the 309 small settlements approved in 2009 relating to cases with IPO laddering allegations, most of which were filed in 2001. This eliminates the impact of such settlements on the average. Once this adjustment is made, the average settlement in 2010 is \$24 million, which is actually lower than the average settlement excluding outliers in other recent years. See Figure 19.

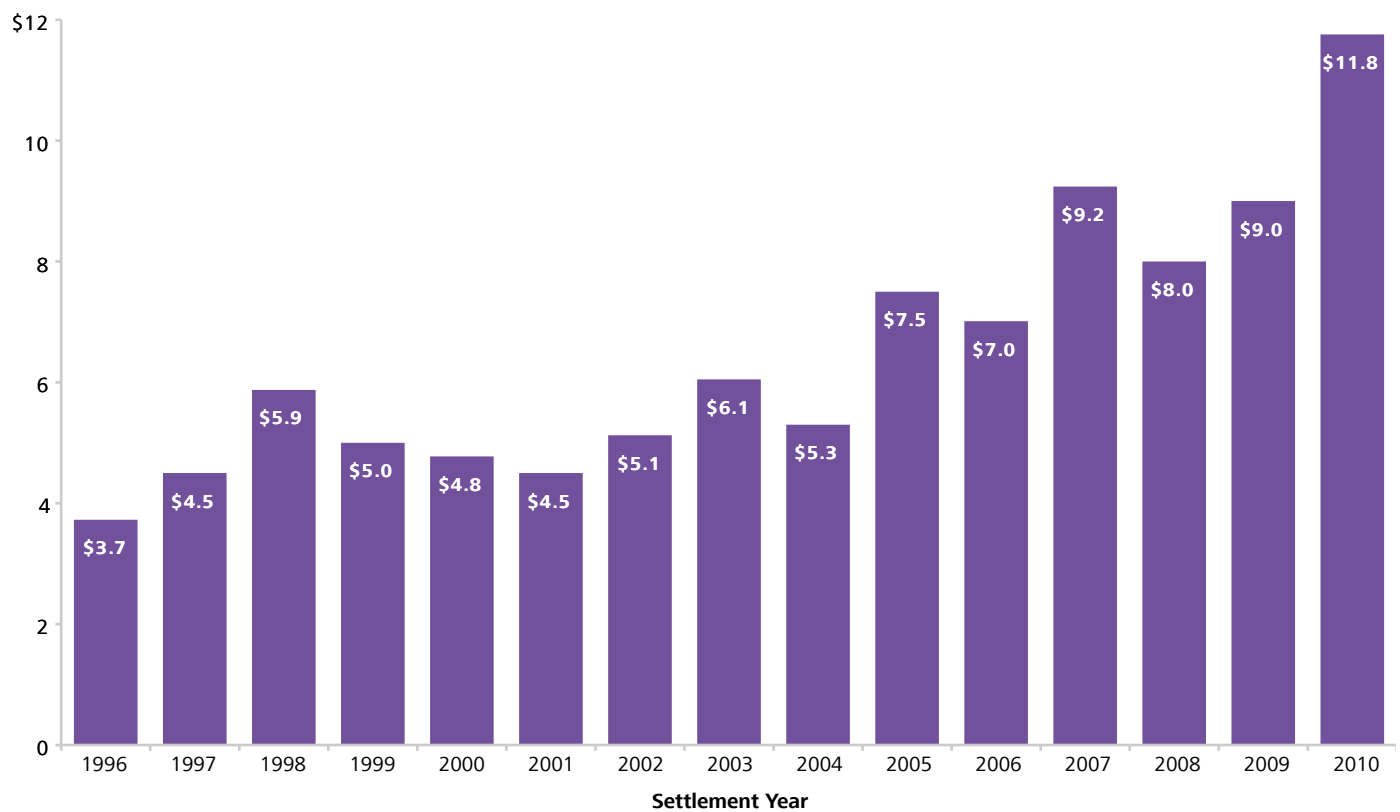
Figure 19. **Average Settlement Value (\$MM), Excluding Settlements over \$1 Billion and 309 Settlements in IPO Securities Litigation**
January 1, 1996 – June 30, 2010



Notes: Average settlement shown without final settlements over \$1 billion: the 2000 Cendant, 2005 WorldCom, the 2006 Royal Ahold, AOL Time Warner, two Nortel Networks, the 2007 Tyco International, Ltd., the 2008 McKesson HBOC Inc., and the 2010 Enron Settlements.

In the first half of 2010, the median settlement was nearly \$12 million, whereas the median settlement has never exceeded \$10 million in any year since the passage of the PSLRA. A rise in median investor losses may be part of what is driving the increase in the median settlement.

Figure 20. **Median Settlement Value (\$MM)**
January 1, 1996 – June 30, 2010



Notes: Settlements exclude IPO laddering cases.

Another approach to tracking the trends in typical settlements is to look at the median, which is less sensitive to outliers than the average. In the first half of 2010, the median settlement was nearly \$12 million, whereas the median settlement has never exceeded \$10 million in any year since the passage of the PSLRA at the end of 1995. See Figure 20. The median settlement of \$11.8 million over the first half of 2010 is nearly a third more than last year’s \$9 million median.

There is a clear upward trend in the median settlement since the PSLRA, albeit with some variation. The median settlement in 1996 was \$3.7 million, and the annual median exceeded \$6 million only once between that year and 2004. However, since 2005, the median settlement has always exceeded \$7 million, and the \$11.8 million median for settlements in the first half of 2010 is more than three times the 1996 median.¹⁹

Distribution of Settlements

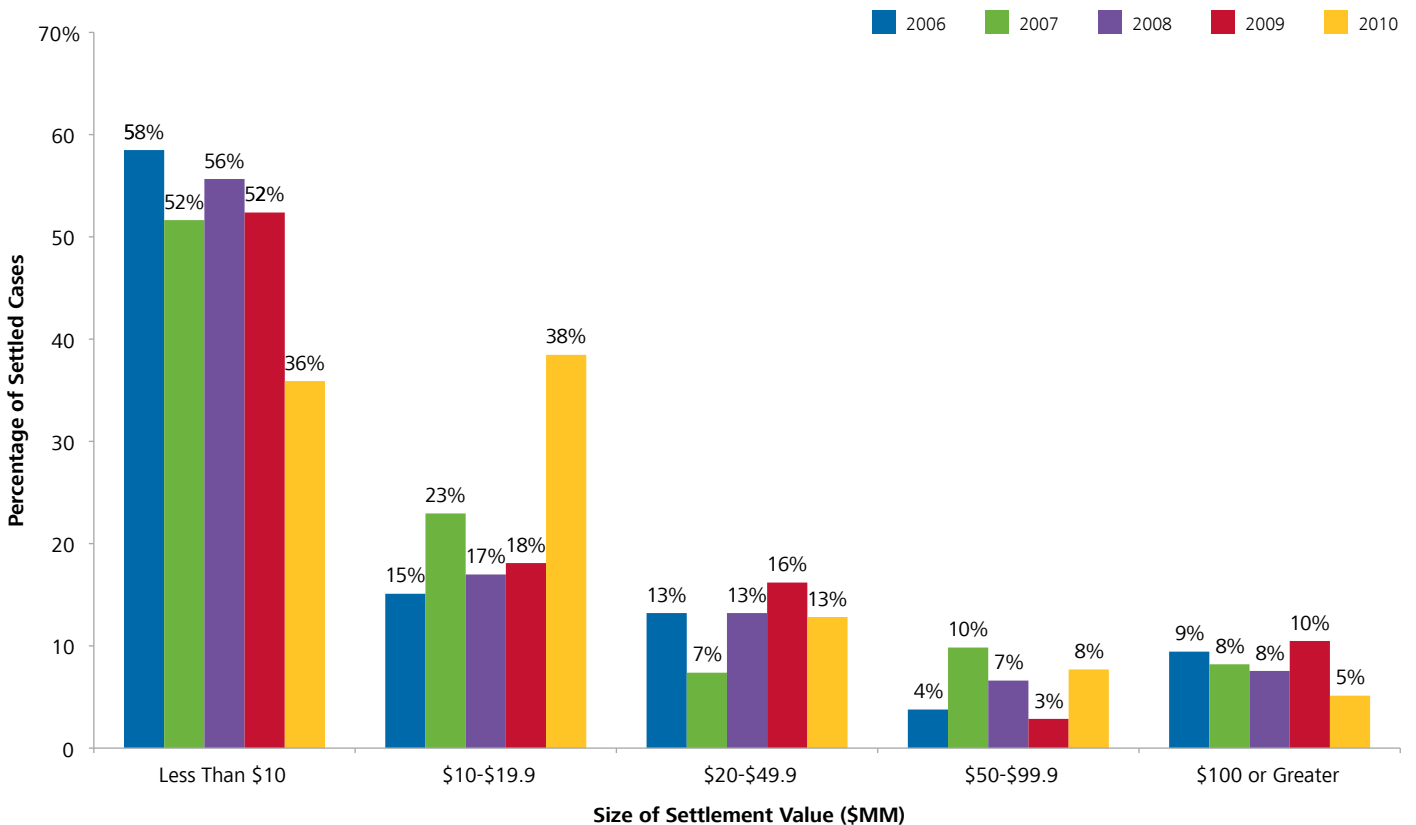
The record high median settlement in the first half of 2010 reflects a shift in the distribution of settlements in the first half of this year. Figure 21 shows the distribution of settlement values and gives an indication of the dynamics that have driven up the median settlement.

In each year from 2005 to 2009, more than 50% of all cases settled for less than \$10 million. However, in the first half of 2010, only 36% of settlements fell into that range. On the other hand, 38% of cases that settled in the first half of 2010 did so for between \$10 and \$20 million, causing the 2010 median settlement to fall within that range. In the first half of 2010, settlements in excess of \$100 million occurred half as often as in 2009. This increase in \$10-to-\$20 million settlements and decline in over-\$100 million settlements helps explain why the median rose but the average, exclusive of outliers, fell.

Table 2 shows the top 10 securities class action settlements. A recently announced tentative settlement by American International Group (AIG) of \$725 million put the total of settlements announced to date by all defendants in that case at \$1,009.5 million as of the date of this report, so the settlement of the AIG class action has for now replaced the UnitedHealth Group settlement in the tenth spot on the list.²⁰ However, AIG's tentative settlement agreement may be terminated if the company is not able to raise \$550 million of its total contribution through sales of its common stock.

As the list currently stands, all of the top 10 settlements now exceed a billion dollars, the first time this has been the case.

Figure 21. **Distribution of Settlement Values (\$MM)**
January 1, 2006 – June 30, 2010



Notes: Settlements exclude IPO laddering cases.

Table 2. **Top 10 Securities Class Action Settlements (As of July 26, 2010)**

Ranking	Company	Settlement Year	Total Settlement Value (\$MM)	Settlements with Co-Defendants that Were			
				Financial Institutions ¹		Accounting Firms ¹	
				Value (\$MM)	Percent	Value (\$MM)	Percent
1	Enron Corp. ²	2010	\$7,242	\$6,903	95%	73	1%
2	WorldCom, Inc. ³	2005	6,158	6,004	98%	65	1%
3	Cendant Corp. ⁴	2000	3,561	342	10%	335	9%
4	Tyco International, Ltd.	2007	3,200	<i>n.a.</i>	<i>n.a.</i>	225	7%
5	AOL Time Warner Inc.	2006	2,650	<i>n.a.</i>	<i>n.a.</i>	100	4%
6	Nortel Networks (I)	2006	1,143	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
7	Royal Ahold, NV	2006	1,100	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
8	Nortel Networks (II)	2006	1,074	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
9	McKesson HBOC Inc.	2008	1,043	10	1%	73	7%
10	American International Group, Inc. ⁵	2010	1,010	187	19%	98	10%
	Total		28,179	13,446	48%	968	3%

Notes: For this summary table only, tentative and partial settlements are included for comparison, and “Settlement Year” in this table represents the year in which the last settlement—whether partial or final—had the first fairness hearing. For partial tentative settlements “Settlement Year” is the year in which this settlement was announced.

- ¹ If “*n.a.*”, either the case did not have a financial institution or an accounting firm co-defendant, or none of the settlement value in column (4) was paid by a financial institution or an accounting firm co-defendant.
- ² This settlement includes eight partial settlements. All remaining defendants in this case were dismissed December 2, 2009. The fairness hearing for the last tentative partial settlement with Goldman Sachs was held on February 4, 2010.
- ³ The settlement value incorporates a \$1.6 million settlement in the MCI WorldCom TARGETS case.
- ⁴ The settlement value incorporates a \$374 million settlement amount in the Cendant PRIDES I and PRIDES II cases. Settlement in the Cendant PRIDES I case was a non-cash settlement valued at \$341.5 million.
- ⁵ This settlement includes one final partial settlement and three tentative partial settlements.

The settlement of the AIG class action has for now replaced the UnitedHealth Group settlement in the tenth spot on the top 10 list.

Table 3. **Distribution of Common Stock Trading Volume Between US and Foreign Exchanges: Selected Major Settlements**

	Nortel Networks (I)	Nortel Networks (II)	Royal Ahold, NV
Class Period Start	10/24/00	4/24/03	7/30/99
Class Period End	2/15/01	4/27/04	2/23/03
US Exchanges			
Total (Shares):	352,055,980	1,378,026,387	107,666,240
Total (%):	65.3%	50.8%	2.4%
	US OTC	US OTC	US OTC
Foreign Exchanges			
Total (Shares):	187,262,825	1,332,477,066	4,449,522,853
Total (%):	34.7%	49.2%	97.6%
	Istanbul Stuttgart Canada Frankfurt	Istanbul London Stuttgart Canada Frankfurt	Frankfurt London Netherlands Switzerland Argentina

Notes: Data are obtained from Bloomberg, LP.

The analysis indicates that the potential impact of *Morrison* on the exposure or losses claimed by investors in the context of a US action may be substantial.

Another perspective on the *Morrison* decision is provided by examining the three settlements in our top 10 list that involve foreign-domiciled primary defendants. These are the Royal Ahold settlement and the settlements of two cases against Nortel Networks. In all three cases the global settlement included investors who purchased securities outside the US. As Table 3 shows, the proportion of total class-period trading volume transacted on a foreign exchange in these cases ranged from 34.7% in the first of the two Nortel Networks cases to 97.6% in the class action against Royal Ahold.

The analysis indicates that the potential impact of *Morrison* on the exposure or losses claimed by investors in the context of a US action may be substantial. If so, certain investors who might have participated in US securities class actions (for example, investors who purchased securities on non-US markets) may, if possible, make claims in jurisdictions outside the US instead.

Plaintiffs' Attorneys' Fees and Expenses

In most securities class actions, fees and expenses for plaintiffs' attorneys make up approximately one-third of the settlement value, but this proportion has generally been smaller for the largest settlements. The proportion has been markedly smaller for settlements exceeding \$100 million. For settlements of over \$500 million, median attorney fees were only 8.8% of the settlement amount. See Figure 22.

Similarly, expenses decline as a percentage of the settlement value as settlement amounts rise. Expenses represent over 5% of the smallest settlements (those below \$5 million) and, on the other end of the spectrum, well below 1% of settlements over \$500 million, such as the Enron settlement.

Figure 22. **Median, Plaintiffs' Lawyers' Fees and Expenses as Percent of Settlement Value**
January 1, 1996 – June 30, 2010

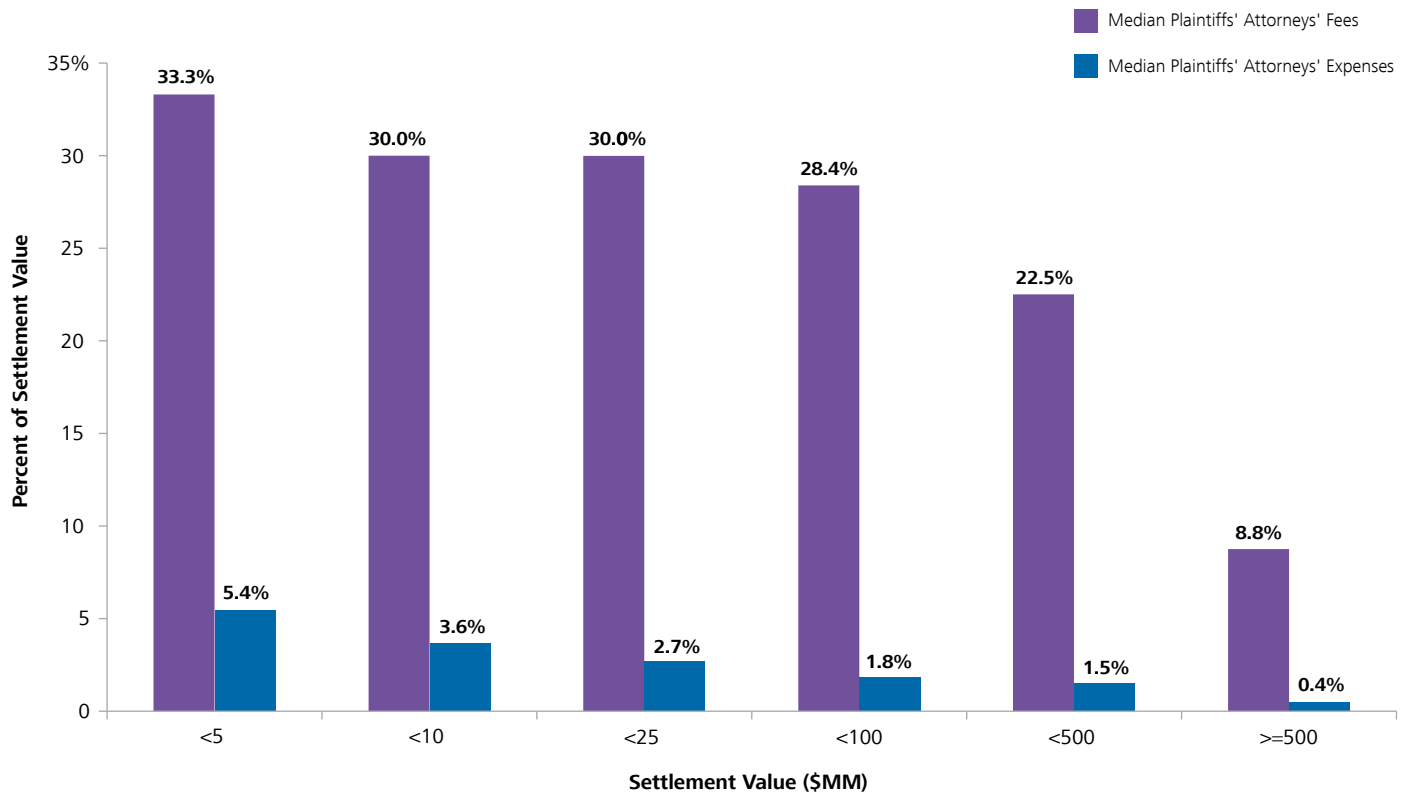
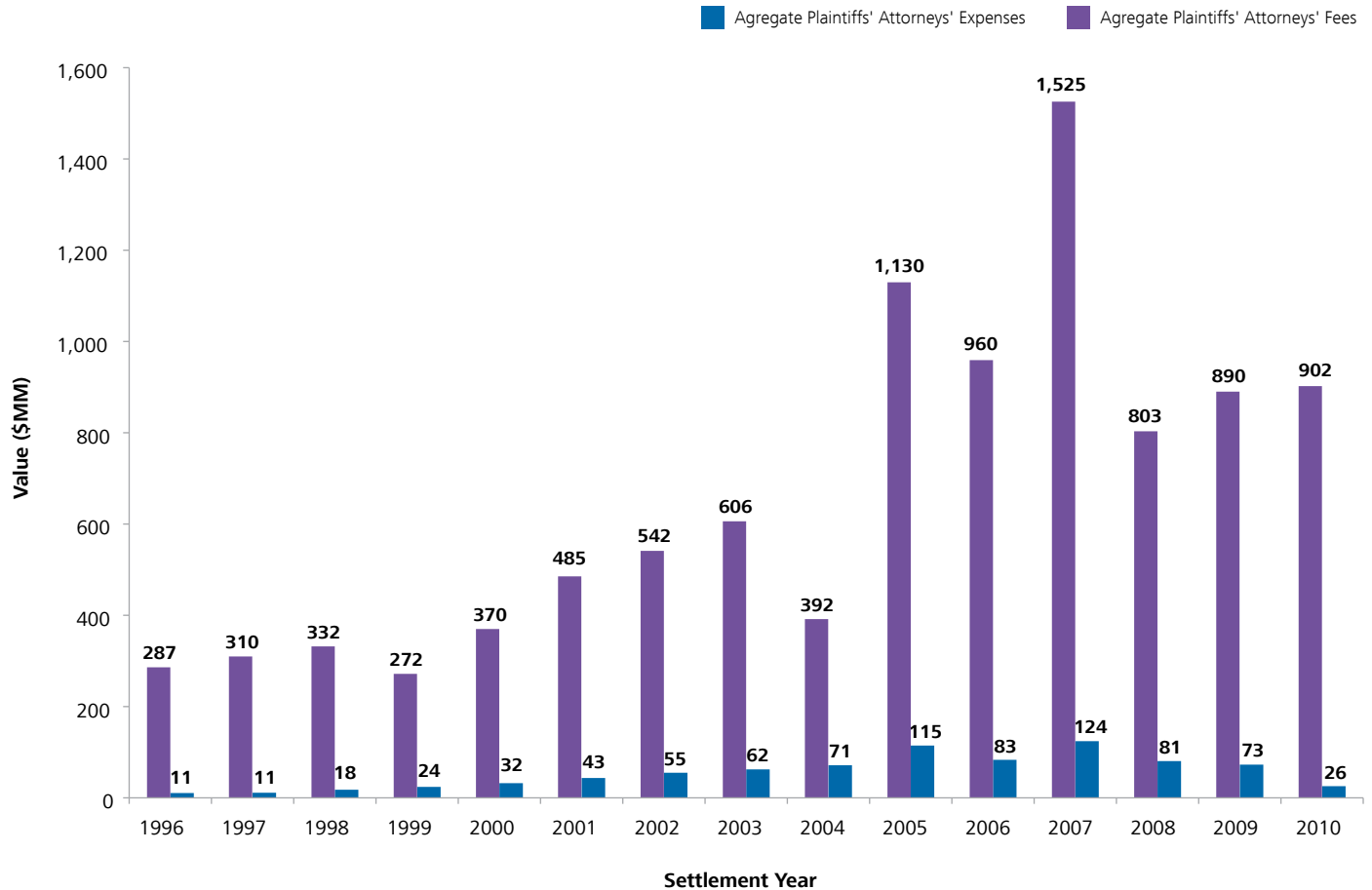


Figure 23. **Aggregate Plaintiffs' Lawyers' Fees and Expenses**
January 1, 1996 – June 30, 2010



Fees and expenses decline as a percentage of the settlement value as settlement amounts rise. In the first half of 2010, plaintiffs' counsel have been awarded a total of \$902 million in fees.

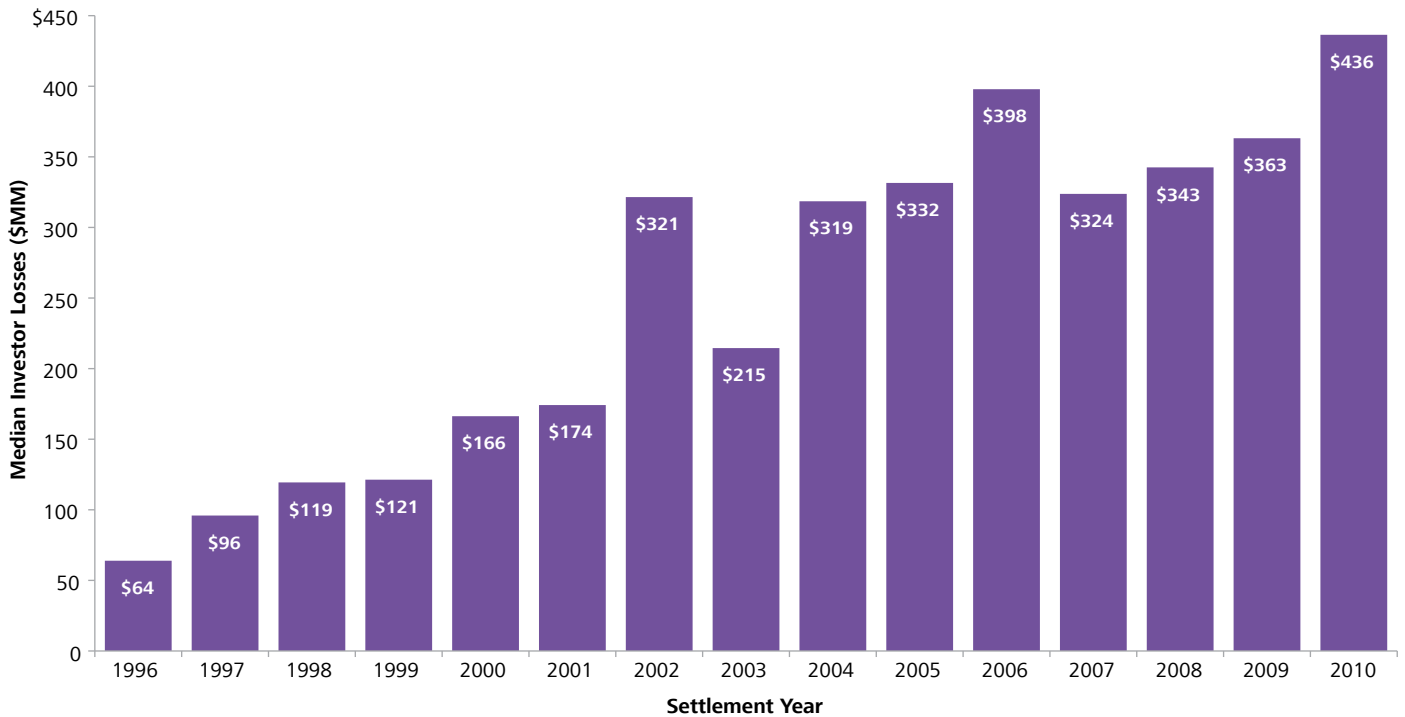
In the first half of 2010, plaintiffs' counsel have been awarded a total of \$902 million in fees. The amount is close to the total fees and expenses for the prior year, due to amounts in connection with the 2010 Enron settlement. With half a year of further settlement activity remaining, aggregate fees and expenses in 2010 will likely exceed the total for last year and could begin to approach the record set in 2007, when plaintiffs' attorneys were awarded a collective \$1.525 billion in fees. See Figure 23.

Investor Losses versus Settlements

Figure 24 presents median investor losses for settlements, by settlement year. Investor losses are a proxy for plaintiff-style damages developed by NERA and can be calculated using publicly available data on stock prices, trading volume, alleged class period, and other relevant characteristics pertaining to any filed case.²¹

Median investor losses were \$436 million in the first half of 2010, higher than in any prior year, and in particular, as seen in Figure 24, since the passage of the PSLRA at the end of 1995.

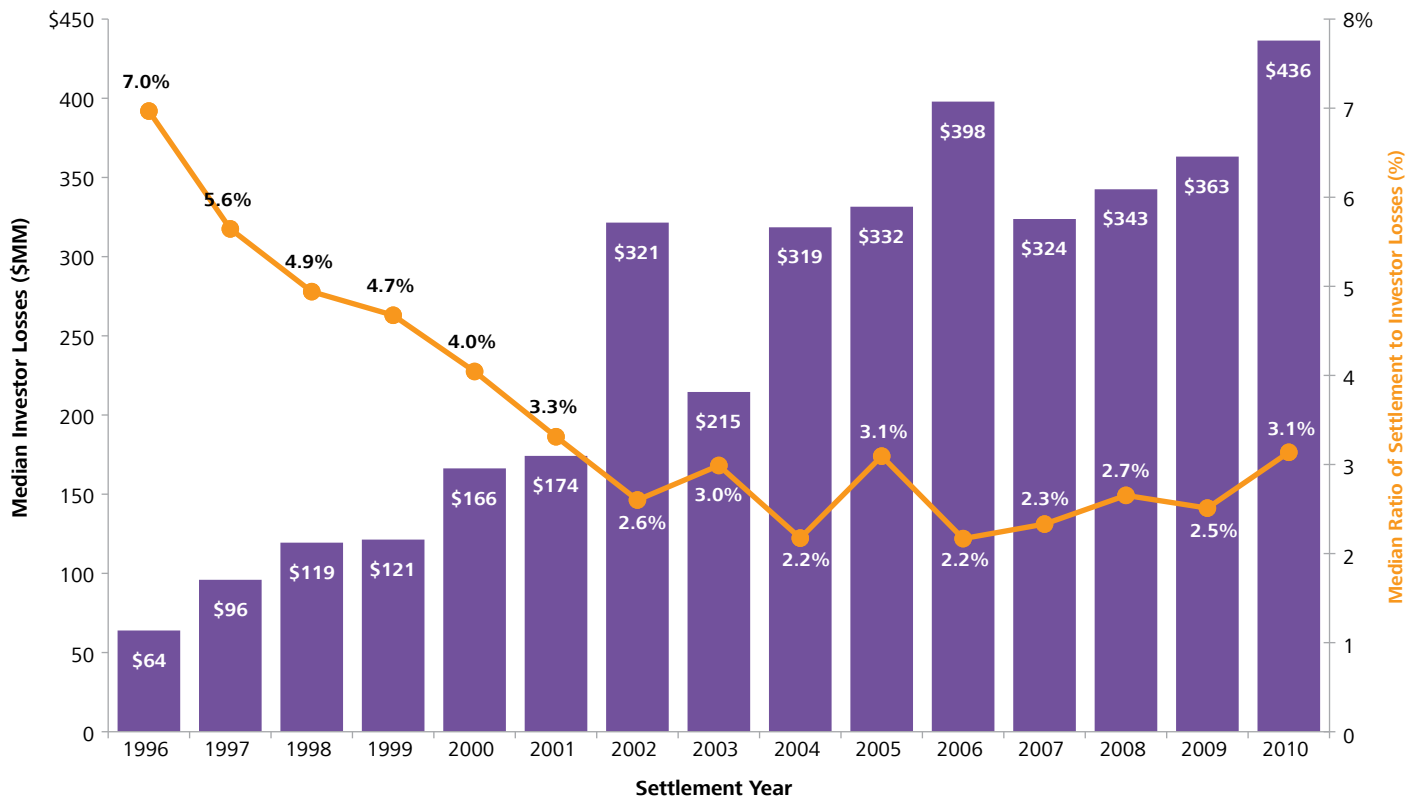
Figure 24. **Median Investor Losses (\$MM) by Settlement Year**
January 1, 1996 – June 30, 2010



Notes: Settlements exclude IPO laddering cases.

Median investor losses were \$436 million in the first half of 2010, larger than in any prior year.

Figure 25. **Median Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 1, 1996 – June 30, 2010



The median ratio of settlements to investor losses was 3.1%, a proportion equal to or higher than the proportion observed in all years since 2002.

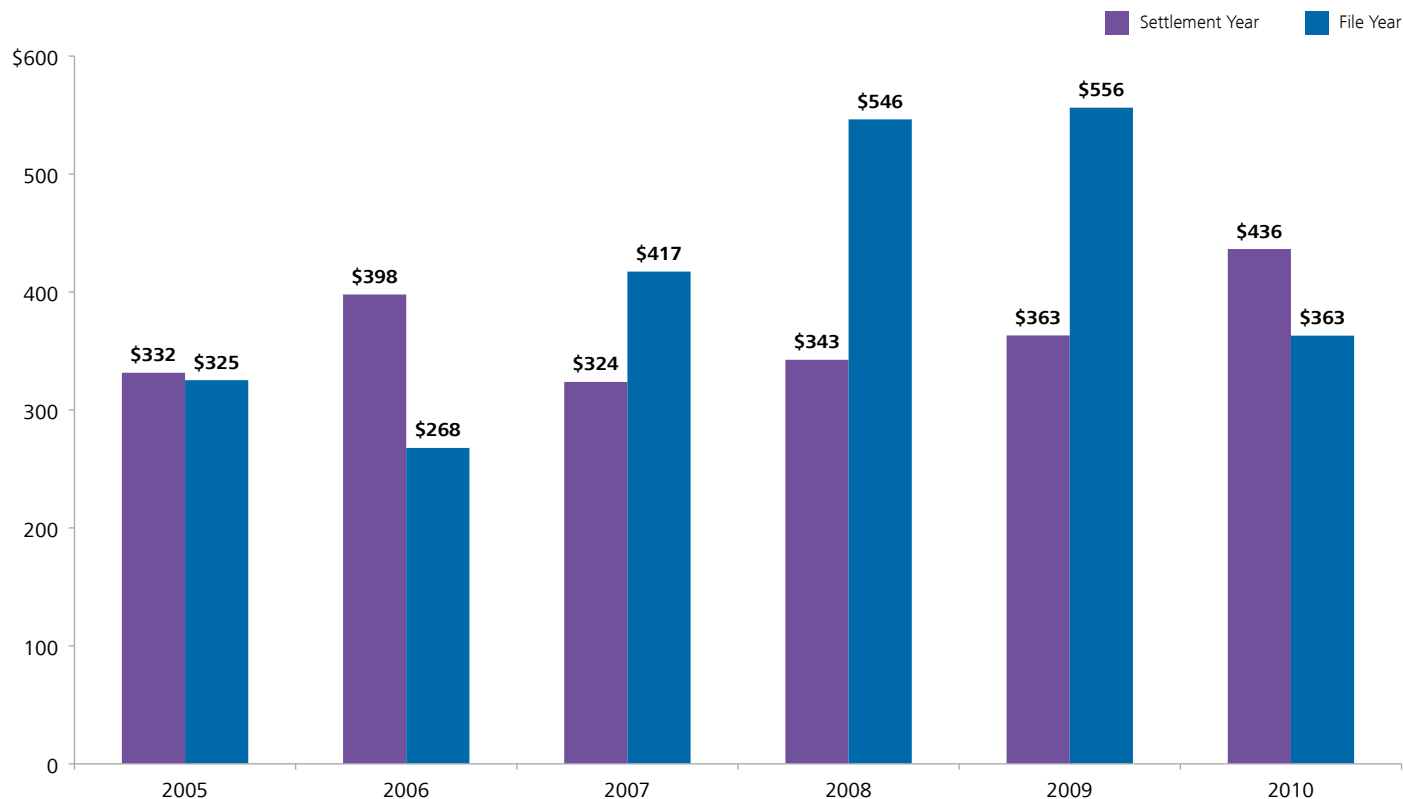
The median ratio of settlement to investor losses trended down from 7% in 1996 to the 2.2% to 3.3% range observed since 2001. See Figure 25. Even though median investor losses hit a record in the first half of the year, corresponding settlements were sufficiently high to make the median ratio of settlements to investor losses 3.1%, a proportion equal to or higher than the proportion observed in all years since 2002.

The increased level of investor losses helps explain the higher observed settlements in the first half of this year. Investor losses historically have been the single most powerful determinant of settlements, explaining approximately half of the variation in log settlement size, controlling for other characteristics of the case.

Given the observed historical correlation between investor losses and settlement values, investor losses in recently filed cases may provide some indication of settlement trends going forward.

Figure 26 shows median investor losses by both settlement year and filing year, from January 1, 2005 through June 30, 2010. Following the onset of the credit crisis, and in 2008 and 2009 in particular, median investor losses for filed cases exceeded those for settled cases by a large margin. In our 2009 year-end publication, we suggested that these higher investor losses may signal potentially higher settlements in the future. In the first half of 2010, for the first time since the onset of the credit crisis, median investor losses for filed cases fell below those for cases that settled, suggesting that any upward influence on future settlements may be moderated as the most recently filed cases work their way through the pipeline.

Figure 26. **Federal Filings Median Investor Losses (\$MM) by Settlement and File Year**
January 1, 2005 – June 30, 2010



Notes: Settlements exclude IPO laddering cases.

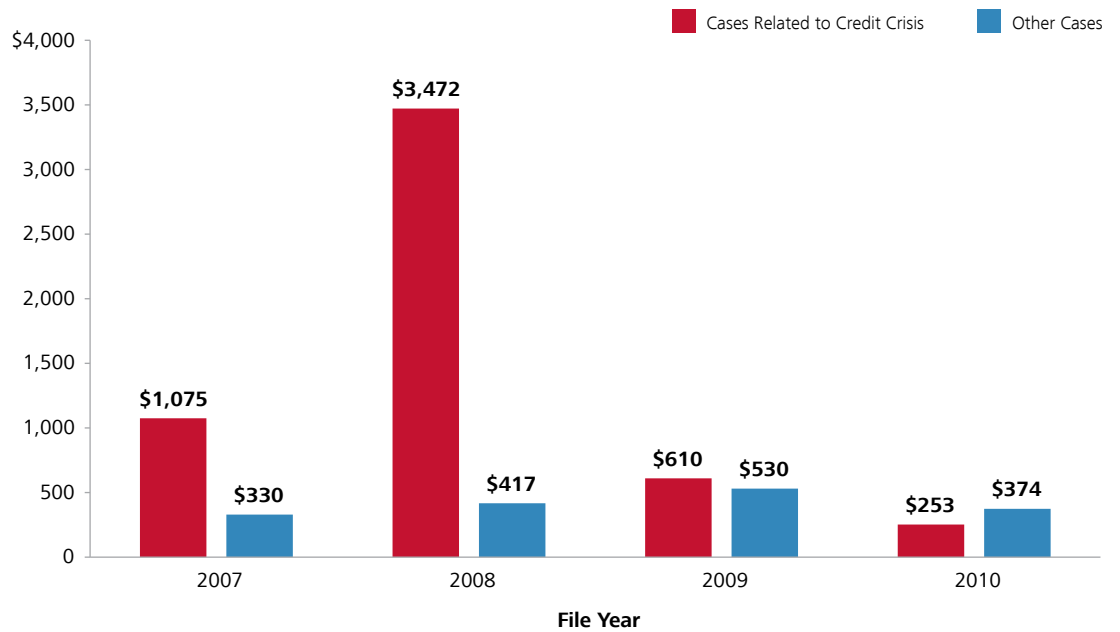
Investor Losses for Cases Related to the Credit Crisis

Credit crisis cases filed in years prior to 2010 had higher investor losses than other cases, especially in 2008, when median investor losses for credit crisis cases were \$3.472 billion, as compared to median investor losses of \$417 million for cases not related to the credit crisis. However, as Figure 27 shows, in the first half of 2010, median investor losses for cases filed related to the credit crisis fell below the median investor losses for other cases.

Aggregate investor losses for filed cases reached a recent peak in 2008, when they exceeded \$410 billion. However, investor losses in 2009 were less than half that amount. Based on the first half of this year, aggregate investor losses are on track to reach approximately \$247.5 billion, above last year's level but still well below 2008. See Figure 28.

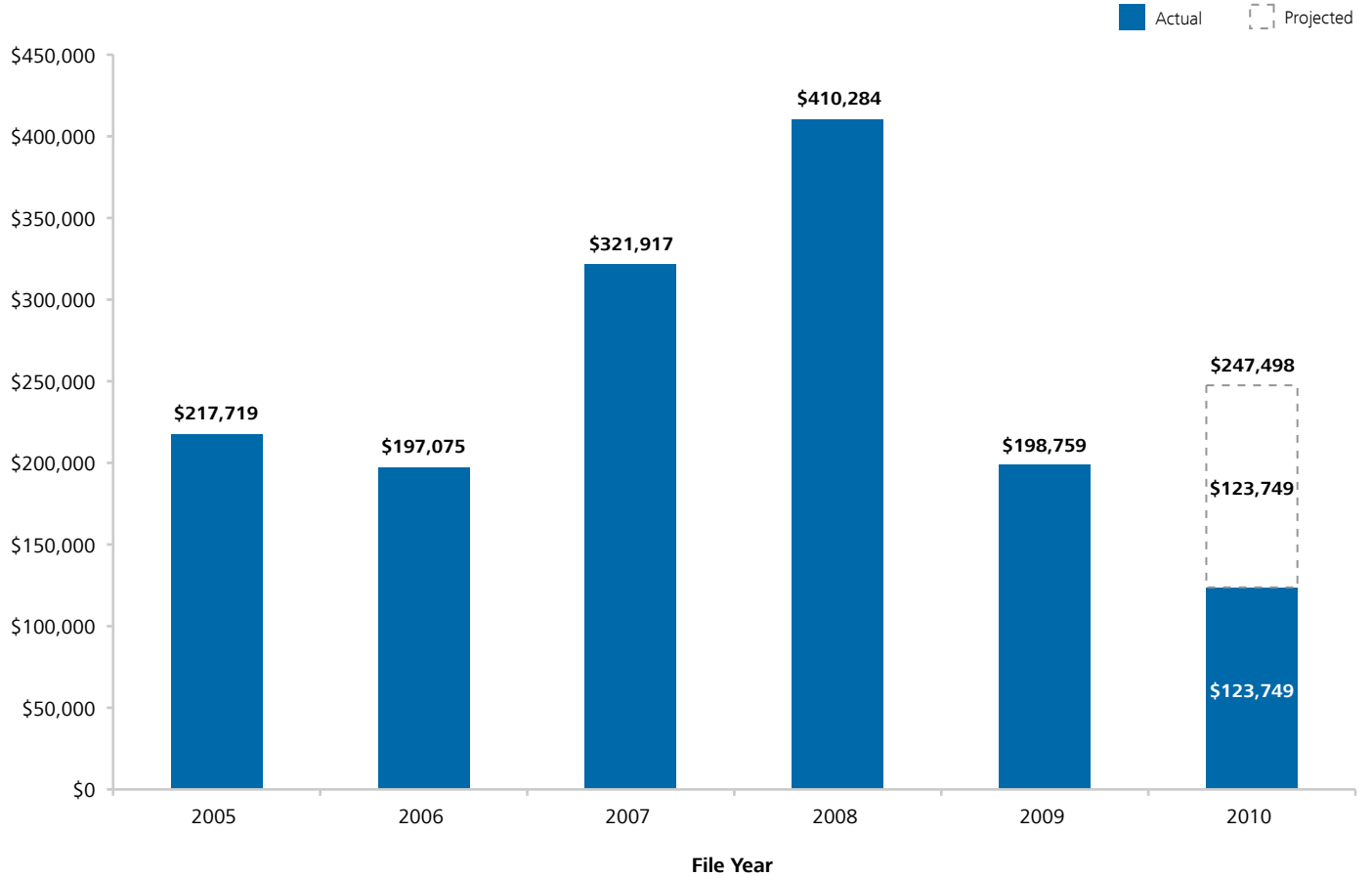
In the first half of 2010, median investor losses for cases filed related to the credit crisis has fallen below the median investor losses for other cases.

Figure 27. **Median Investor Losses (\$MM) for Cases Related to Credit Crisis and Other Cases by File Year**
January 1, 2007 – June 30, 2010



Notes: Cases Related to Credit Crisis include subprime cases and auction-rate securities cases. Other Cases include standard and options backdating cases.

Figure 28. **Aggregate Investor Losses (\$MM) by File Year**
January 1, 2005 – June 30, 2010



The number of future filings and the value of future settlements may be significantly affected by the *Morrison* decision, which could reduce these numbers, and by recent proposed financial reforms.

Looking Ahead

Possible Impact of the Dodd-Frank Act

Certain provisions of the Dodd-Frank Act could affect future securities class action filings and settlements. First, the Act directs the SEC to study whether the “conduct” and “effects” tests that were applied to determine extraterritorial jurisdiction prior to the Supreme Court’s *Morrison* decision should be effectively restored in securities class actions and other private actions alleging securities fraud. For SEC or other US Government actions, the act does restore the conduct and effects tests.

Another relevant provision concerns a private right of action for aiding and abetting in securities fraud cases. While the law as enacted does not create such a right of action, it does direct the Comptroller General to study the potential impact of allowing class actions and other private suits against parties alleged to have aided and abetted violations of the federal securities laws. The introduction of a private right of action for aiding and abetting would seemingly have the effect of reversing the effect of the US Supreme Court’s 1994 decision in *Central Bank of Denver v. First Interstate Bank of Denver*²² holding that private civil actions under Rule 10b-5 do not extend to aiding and abetting, and the Court’s 2008 decision in *Stoneridge Investment Partners v. Scientific Atlanta*²³ barring “scheme liability” for entities that do not actually make statements or engage in conduct relied upon by investors.

Conclusion

We observed record-setting aggregate investor losses for cases filed in 2008, followed by smaller investor losses for cases filed in 2009 and in the first half of 2010. Both the pace of future filings and the value of some future settlements may be substantially affected by the *Morrison* decision, which could reduce these numbers, and by the Dodd-Frank Act, provisions of which could ultimately lead to an increase in filings and affect certain settlements. The lower median investor losses observed in cases filed in the first half of 2010 indicate that the typical settlement may eventually fall from its current high level, though the high level of investor losses in many credit crisis cases—most of which remain pending—suggests that there may nonetheless be a number of large settlements in the pipeline.

Notes

The opinions expressed herein do not necessarily represent the views of NERA Economic Consulting or any other NERA consultant. Please do not cite without explicit permission from the authors.

- 1 This edition of NERA's research on recent trends in shareholder class action litigation expands on previous work by our colleagues Lucy Allen, Elaine Buckberg, Frederick C. Dunbar, Todd Foster, Vinita M. Juneja, Denise Neumann Martin, Ronald I. Miller, and David I. Tabak. We gratefully acknowledge their contribution to previous editions as well as this current version. The authors also thank Jake George, Brad Heys, Vinita M. Juneja and Adam T. Savett for helpful comments. In addition, we thank Benjamin Berman, Jiaqi Bian, Petar Dudukovski, David Gillen, Kevin Kostka, Kaitlin Simpson, Sheena Siu, Carlos Soto, Erik Stettler, Min Zheng, and many other NERA Securities and Finance Practice researchers for their valuable assistance with this paper. These individuals receive credit only for improving this paper; all errors and omissions are ours.
- 2 *Morrison et al. v. National Australia Bank Ltd. et al.*, 561 U. S. ____ (2010).
- 3 As described more fully below, investor losses are a rough proxy for plaintiffs' damages. They can be calculated using public data and have historically been the primary determinant of settlement size.
- 4 Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. (2010).
- 5 Data on filings come from multiple sources, including RiskMetrics Group/Securities Class Action Services (SCAS), Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., SEC filings, and the public press. In compiling our data, we seek information on all unique class actions alleging damages with regard to the purchase, ownership, or sale of securities. Most of our summary statistics below are based on data for cases filed in US federal courts. Until cases are consolidated, we report multiple filings that potentially are related to the same alleged fraud if complaints are filed in different circuits. Similarly, until cases are consolidated, we report multiple filings if different cases are filed on behalf of investors in common stock and other securities. If cases are ultimately consolidated, the data are adjusted accordingly.
- 6 See NERA Working Paper "Credit Crisis Litigation Revisited: Litigating the Alphabet of Structured Products," by Faten Sabry, Anmol Sinha, Jesse Mark, and Sungi Lee, June 2010, at http://www.nera.com/67_6631.htm.
- 7 For more on ETF litigation, see NERA Working Papers "Rebalancing Act: A Primer on Leveraged and Inverse ETFs," by Raymund Wong and Kara Hargadon, October 2009, at http://www.nera.com/extImage/PUB ETF Leveraged_1009_web.pdf and "Exchange-Traded Funds: Consequences of Expansion," by Raymund Wong and Kara Hargadon, July 2010, at http://www.nera.com/nera-files/PUB ETF Expansion_Consequences_0710.pdf.
- 8 Specifically, we define "standard filings" as filings in cases *other than* (a) recent filings in categories of special interest, namely credit crisis (including ARS), Ponzi scheme, and options backdating cases; and (b) earlier special categories of cases, namely, IPO laddering, mutual fund market timing, and research analyst-related cases.
- 9 This figure includes credit crisis-related cases, including cases related to auction-rate securities.
- 10 Moreover, 29% of filings from January 1, 2007 to June 30, 2009 occurred within two weeks of the alleged class period end, half within 48 days, and 86% within a year.
- 11 *Merck & Co., Inc., et al. v. Reynolds et al.*, 559 U. S. ____ (2010).
- 12 Most securities class action complaints have multiple allegations. All allegations are included in this analysis, such that the total number of allegations exceeds the total number of filings.
- 13 See NERA Working Paper "Recent Trends in Securities Class Actions Litigation: 2009 Mid-Year Update; Filings Remain High, Fueled by Credit Crisis and Ponzi Scheme Claims; Median Settlements Remain Under \$10 Million," by Stephanie Plancich and Svetlana Starykh, July 2009, at http://www.nera.com/extImage/Recent_Trends_Report_07_09.pdf.
- 14 Our dismissal statistics include summary judgments and verdicts for defendants, but exclude partial dismissals. Due to the nature of dismissal data, on one hand, our dismissal counts in this section may be slightly overstated because they may include some dismissals without prejudice that will be reversed by amended and better-pleaded complaints, dismissals with prejudice that will be successfully appealed, or cases that will settle after a dismissal without prejudice and before the expiration date for plaintiffs to re-file an amended complaint. On the other hand, dismissal counts may be slightly understated because we currently do not count as dismissals those dismissals with prejudice that subsequently settled or reverted to pending status. These two effects tend to offset one another.
- 15 *Dura Pharmaceuticals, Inc., et al. v. Broudo et al.*, 544 U.S. 336 (2005).
- 16 Even this comparison overstates the incidence of cases going to trial, as the 27 post-PSLRA trials include 10 cases that were filed prior to the PSLRA.
- 17 "3rd UPDATE: US Jury Finds Vivendi Liable For Misstatements," *Dow Jones International News*, January 29, 2010, 3:51 pm.
- 18 Unless otherwise noted, tentative settlements and cases in which not all non-dismissed defendants have settled are not included in our settlement statistics. We define "Settlement Year" as the year in which the first court hearing related to the fairness of the settlement occurred. For cases with multiple partial settlements, a settlement year is determined by the court fairness hearing date of the last partial settlement that concludes the case.
- 19 Adjusted for inflation, the \$11.8 million median settlement is more than double the amount of the median settlement in 1996.
- 20 "AIG Settles Investor Lawsuit for \$725 Million, May Sell Shares," *BusinessWeek*, July 16, 2010.
- 21 Investor losses are measured by comparing a company's return to the return on the S&P 500 over the class period, and by using a proportional decay trading model to estimate the number of affected shares of common stock.
- 22 *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994).
- 23 *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148 (2008).

About NERA

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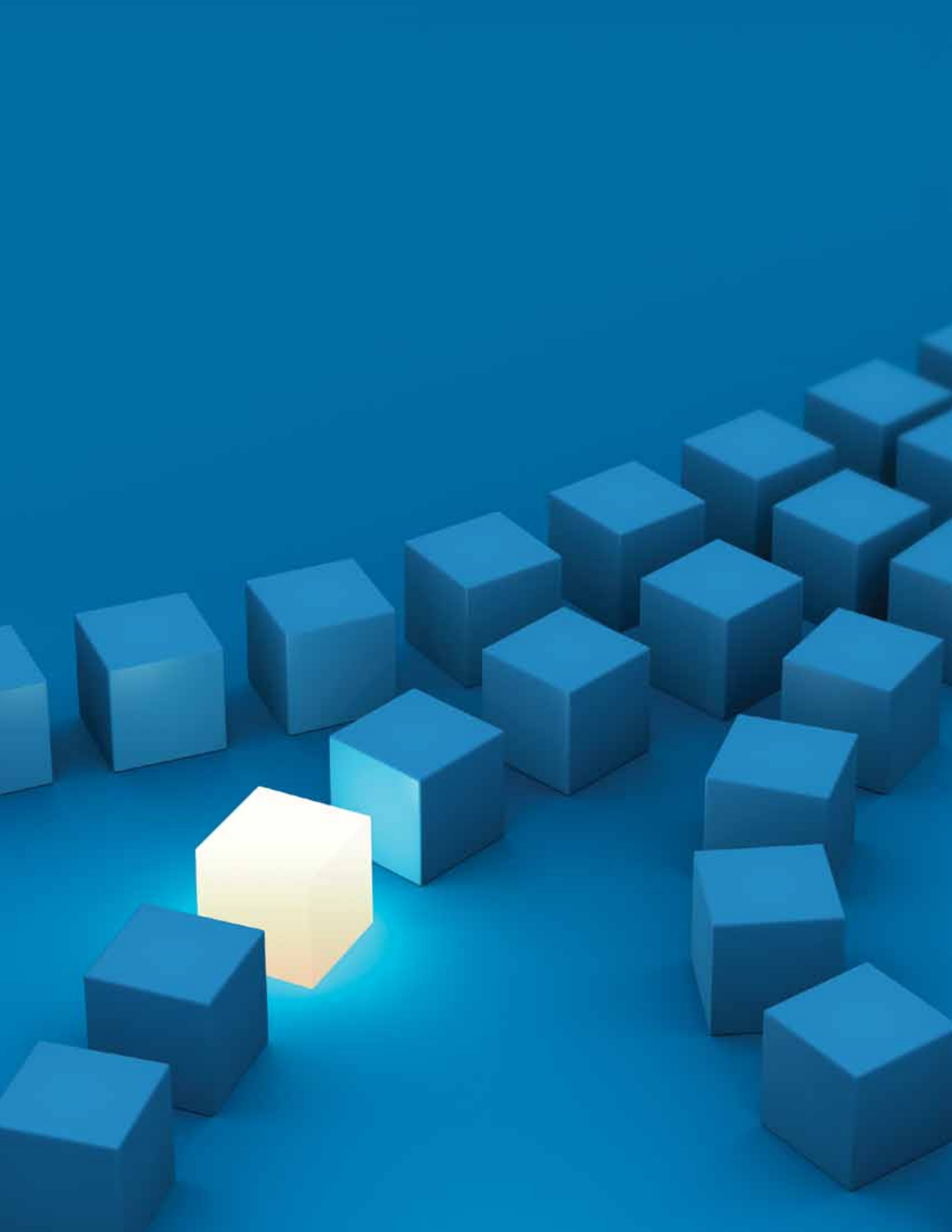
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