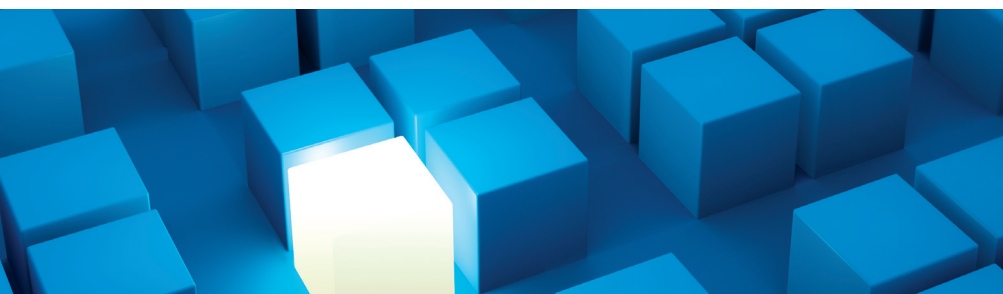


20 January 2015



Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review

Settlement amounts plummet in 2014,
but post-*Halliburton II* filings rebound

By Dr. Renzo Comolli and Svetlana Starykh

Highlights

2014 in Filings

- Number of 10b-5 filings was up 14% post *Halliburton II*, compared to the period when *Halliburton II* was pending, p. 6.
- 75% of Section 11 cases were filed in one of the circuits that, according to Petitioner in *Omnicare*, requires plaintiff to plead subjective falsity, p. 8.
- *Affiliated Ute* now invoked alongside fraud on the market in about half of the cases, p. 7.

2014 in Motions

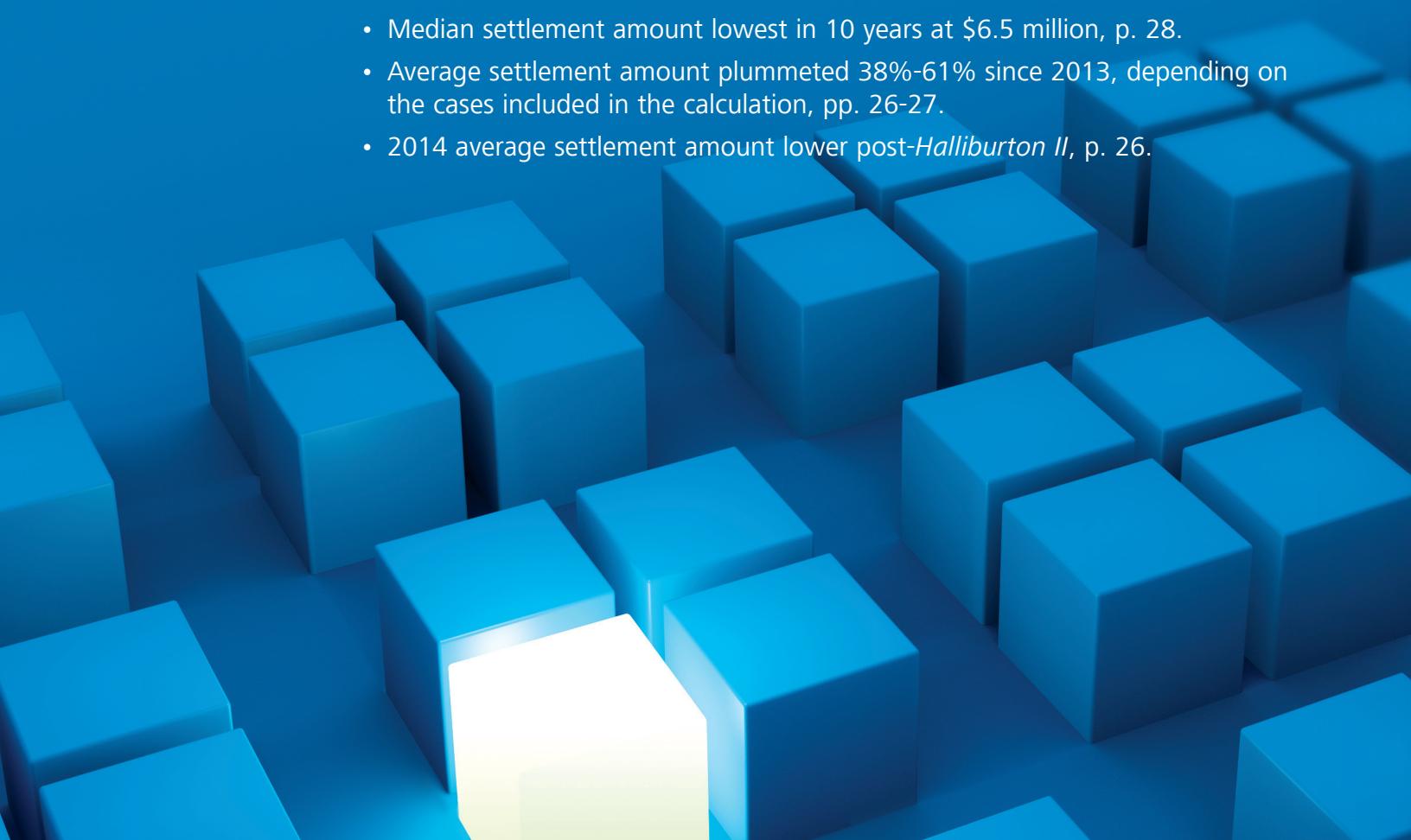
- Only 3 motions for class certification decided at district court level post-*Halliburton II*, p. 19.

2014 in Case Resolutions

- Number of settlements continues to be at or close to the all-time low for the third consecutive year, p. 20.
- Number of 10b-5 settlements did not rebound post-*Halliburton II*, p. 21.

2014 in Settlements

- Median settlement amount lowest in 10 years at \$6.5 million, p. 28.
- Average settlement amount plummeted 38%-61% since 2013, depending on the cases included in the calculation, pp. 26-27.
- 2014 average settlement amount lower post-*Halliburton II*, p. 26.



Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review

Settlement amounts plummet in 2014, but post-*Halliburton II* filings rebound

By Dr. Renzo Comolli and Svetlana Starykh¹

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Introduction and Summary²

Once again in 2014, the Supreme Court stole the limelight in the securities class action arena with its much-awaited decision in *Halliburton v. Erica P. John Fund* ("*Halliburton II*") at the end of June. As is well known, the Supreme Court addressed the presumption of reliance at class certification for actions alleging violation of section 10(b) of the Securities Exchange Act and held that "defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock."³

At press time, only 3 district courts have had the opportunity to apply *Halliburton II*: all 3 considered defendants' arguments about price impact, but ultimately granted plaintiffs' motion for class certification. But 3 decisions are far too few to extrapolate, and the full impact of *Halliburton II* on securities class actions is still to come.

Nonetheless, data already tell us a few things. The number of 10b-5 filings rebounded 14% after the *Halliburton II* decision was issued compared to when it was pending. On the other hand, over 2014 as a whole and including all types of securities class actions into the count, the number of filings remained flat compared to recent years.

Settlement amounts in 2014 plummeted. Measured by median amount, settlements have been the lowest in 10 years. Measured by average amount, settlements have dropped 38%-61%, depending on which types of class actions are considered. Moreover, average settlement amounts were actually lower after *Halliburton II* than in the previous part of 2014. We can ask whether that is because now some defendants who face larger or somewhat larger plaintiffs' demands are holding off, planning to avail themselves of the "no price impact" defense at class certification.

Additionally, the number of settlements was low in 2014: for the third consecutive year the number of settlements was at or close to the all-time low since the PSLRA was enacted. A new analysis of the time to resolution shows that, on average, 59% of the cases resolve (whether through settlement or dismissal) within three years from first filing. But the number of cases pending in court appears to have been increasing over the last three years, suggesting a possible slowdown of resolutions.

We rounded out our analyses related to *Halliburton II* by providing statistics about the presumption of reliance pled at first filing of 10b-5 complaints in which holders of common stock were part of the proposed class. We found that fraud-on-the-market is virtually always invoked; *Affiliated Ute* was hardly ever invoked in 2009, while now it is invoked as an additional presumption in a large fraction of the cases.

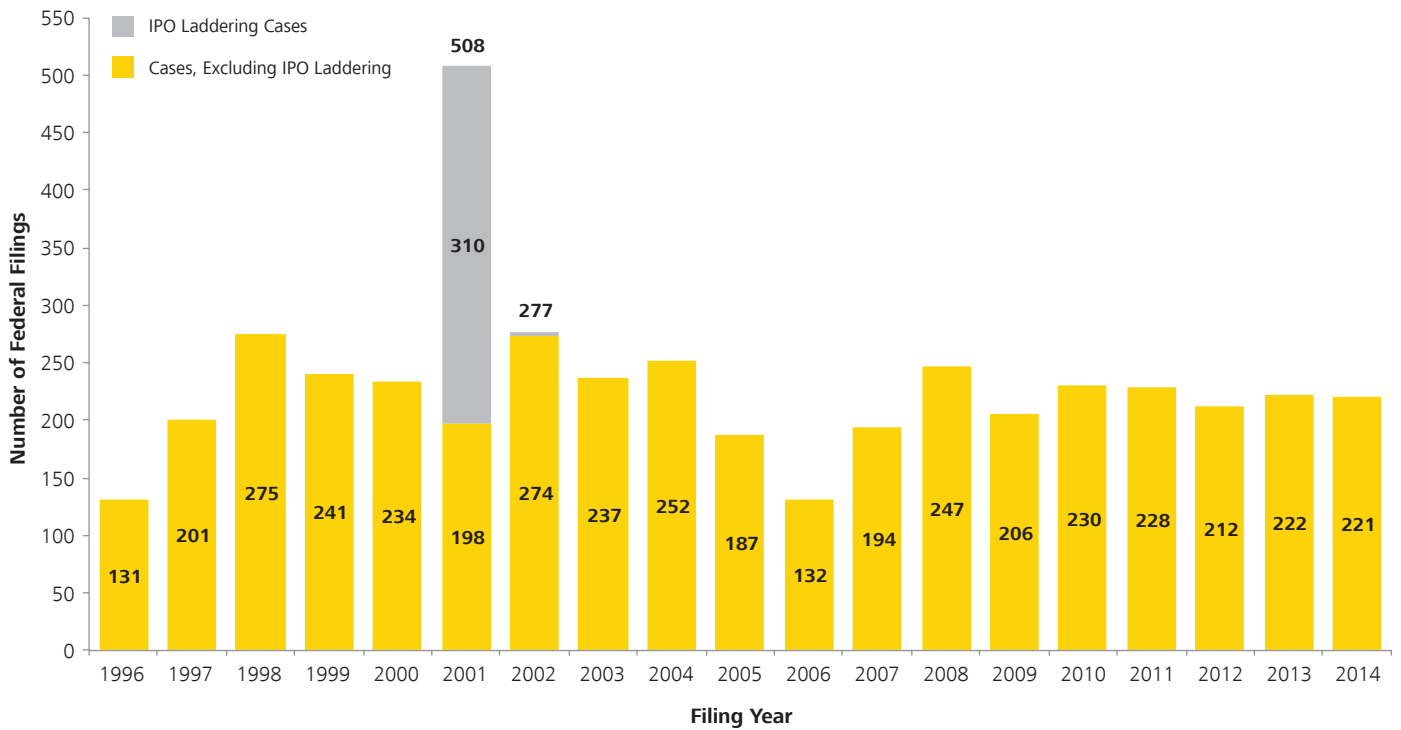
Last, in 2014 the Supreme Court also granted *certiorari* in a Section 11 case, *Omnicare*. The decision, expected for the first half of 2015, will come right on the heels of a “bumper IPO year,” as 2014 as has been called. In preparation, we analyzed the historical distribution of Section 11 filings across circuits based on the question posed to the Court.

Trends in Filings⁴

Number of Cases Filed

In 2014, 221 securities class actions were filed in federal court. The annual number of securities class actions filed displayed a remarkable stability over the last 6 years: 222 were filed in 2013 and 220, on average, were filed during the 2009-2013 period. We need to go back to 2008, to the filing peak prompted by the credit crisis, to see a substantially higher number of total filings, 247. See Figure 1.

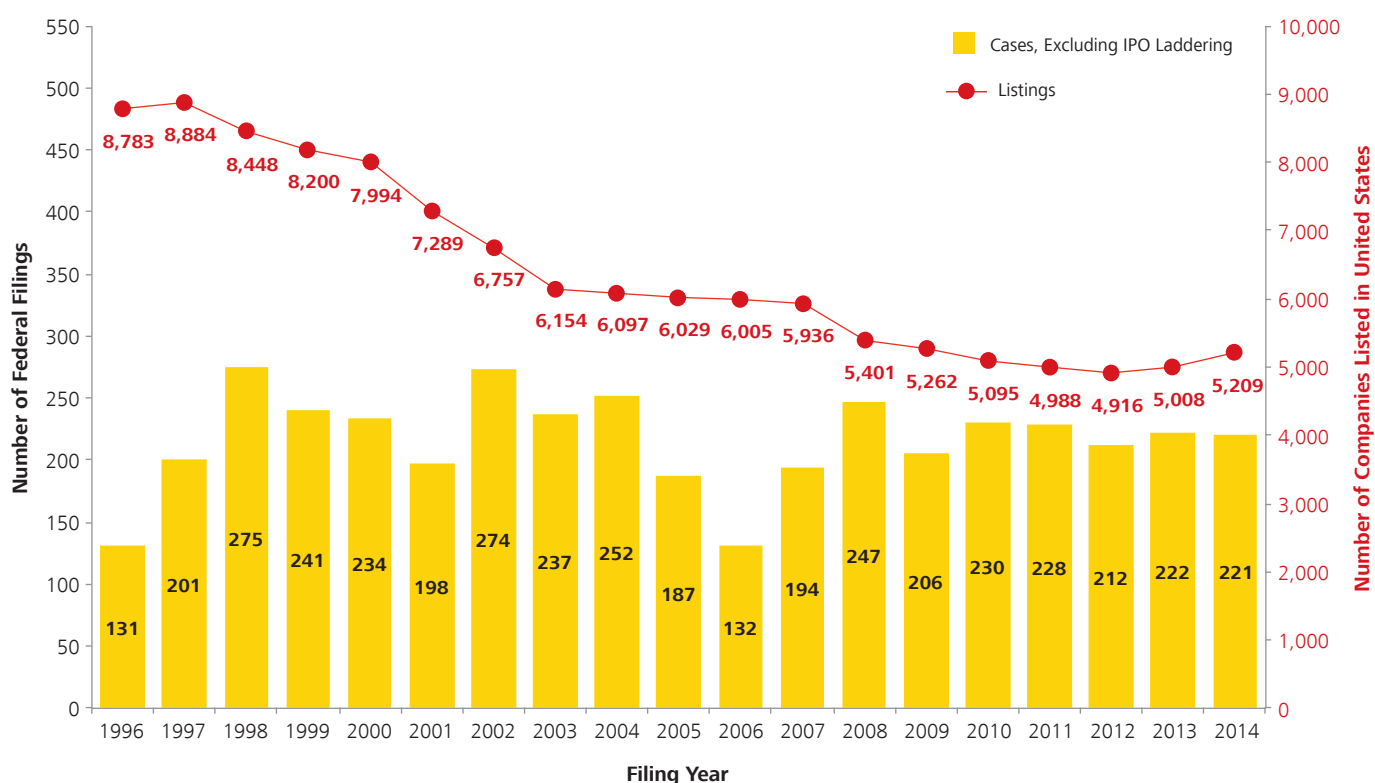
Figure 1. **Federal Filings**
January 1996 – December 2014



As of October 2014, 5,209 companies were listed on the NYSE, NASDAQ or AMEX; listings on those exchanges are used as an approximation for the number of companies listed in the US for the purpose of this analysis.⁵ Given that 221 securities class actions were filed in 2014, the average probability of a company being the target of a securities class action was 4.2% in 2014.

The number of listed companies has increased by about 300 between 2012 and 2014, from 4,916 to 5,209. However, this recent increase goes in the opposite direction of the trend over the years 1996-2014. Since 1996, the number of listed companies has decreased by 3,574, or 41%, going from 8,783 to 5,209. See Figure 2. This longer trend in the number of listed companies (coupled with the number of class actions filed) has implications for the average probability of being sued, which has increased from 2.3% over the 1996-1998 period to 4.2% in 2014.

Figure 2. **Federal Filings and Number of Companies Listed in United States**
January 1996 – December 2014



Note: Number of companies listed in US is from Meridian Securities Markets; 1996-2013 values are year-end; 2014 is as of October.

Filings by Type

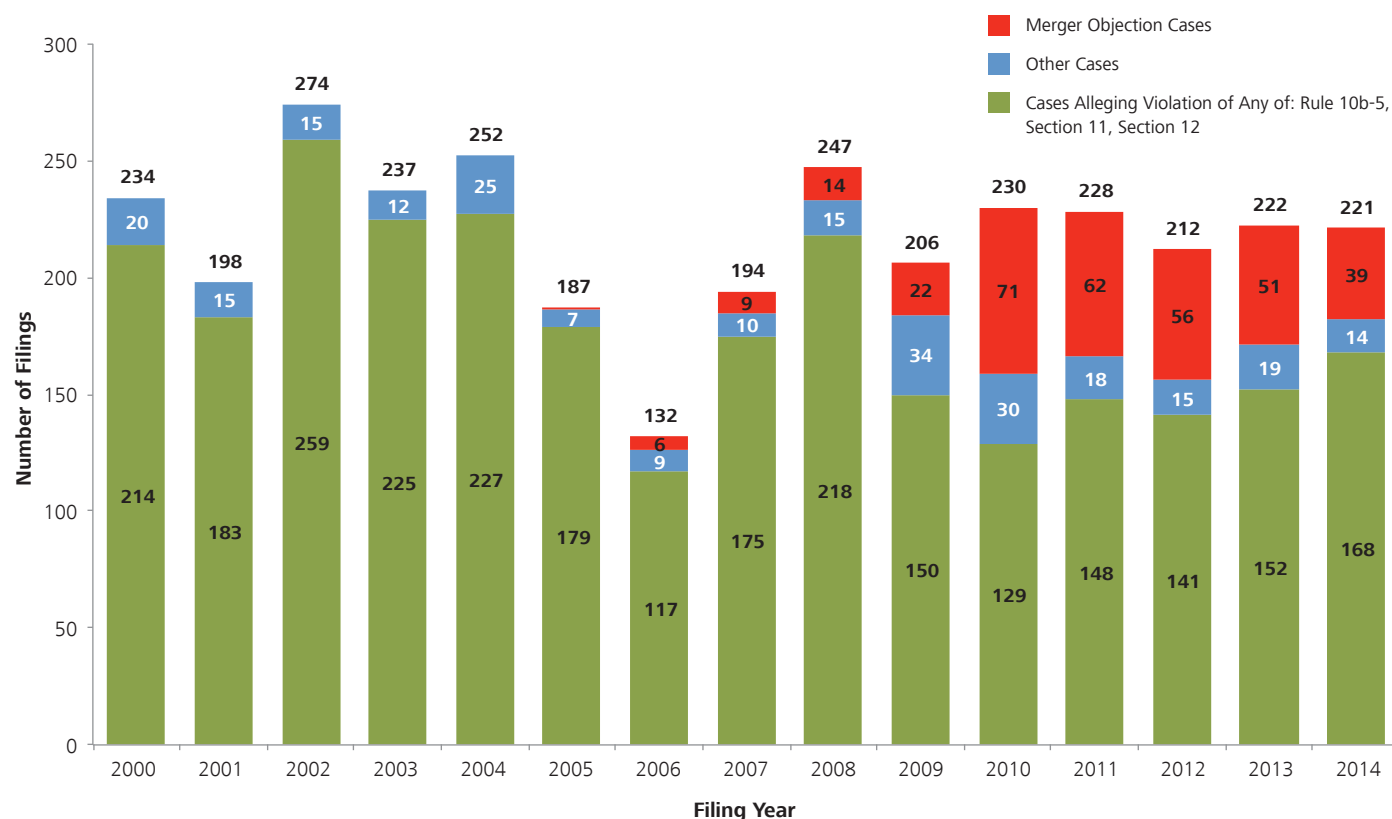
While the total number of securities class actions filed since 2009 has remained remarkably stable, the types of class actions filed have changed.

Securities class actions alleging violations of Rule 10b-5, Section 11, and/or Section 12 are often regarded as “standard” securities class actions: they are depicted in green in Figure 3. In 2014, 168 “standard” cases were filed, an 11% increase over 2013 and a 30% increase over 2010 (the recent trough). So, while the number of “standard” cases filed in 2014 is still lower than the number filed in 2008 or during the earlier 2000-2004 period, in recent years it has been on an upward trend.

Merger objection cases filed in federal court were a focus in 2010, with 71 cases filed accounting for 31% of all securities class actions filed in that year. Since then, the number of merger objections filed at federal level has been shrinking: only 39 were filed in 2014, accounting for 18% of the securities filings last year. (Here, we count as merger objections both cases alleging violation of securities laws and cases that merely allege breach of fiduciary duty. We do not count merger objections filed in state court, which can potentially be many more.)

Rounding out the total in 2014 is a variety of cases mostly alleging breach of fiduciary duty for a variety of reasons (including proxy disclosures for D&O incentive plans), but also including violations of the Trust Indenture Act of 1939, and 1 case alleging a violation of Section 5(a) of the Securities Act (and none of the “standard” allegations). See Figure 3.

Figure 3. **Federal Filings by Type**
January 2000 – December 2014



Notes: Before 2005, merger objections (if any) were not coded separately from "other cases." This figure omits IPO laddering cases.

Number of 10b-5 Cases Filed and Recent Supreme Court Cases

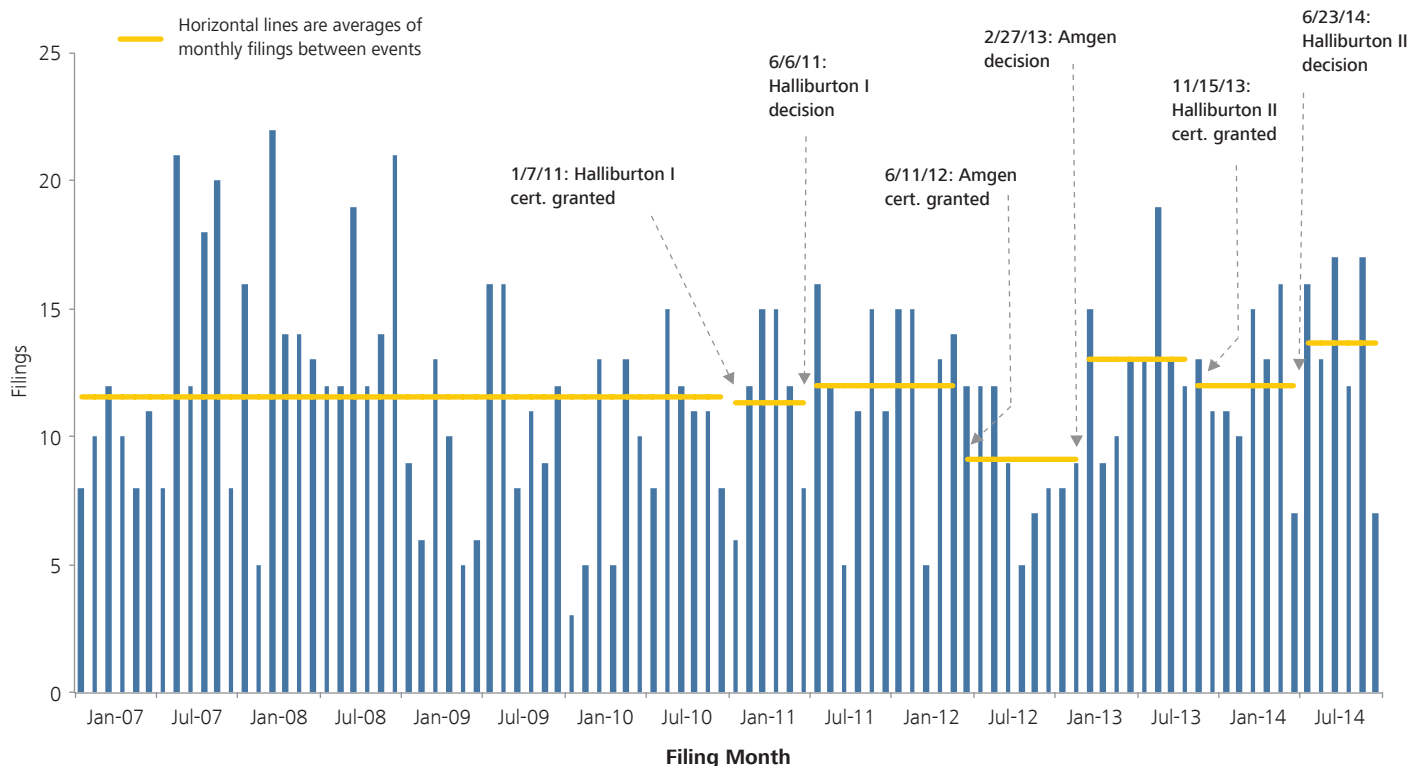
For the third time in four years, the Supreme Court has taken the center stage in the debate over securities litigation. In *Halliburton II*, the Court was asked whether it should overrule or modify *Basic*'s presumption of reliance in cases alleging violation of section 10(b) of the Securities Exchange Act and, if not, whether defendants should be afforded an opportunity to rebut the presumption at the class certification stage by showing a lack of price impact. The Court declined to overrule *Basic* and held that "defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock."⁶

Filings of 10b-5 class actions were slow while the Supreme Court was considering *Halliburton II* compared to previous experience, but rebounded after the decision. Compared to when *Halliburton II* was pending, the average monthly filings increased by 25% during July-November 2014. A slow December brought the post-*Halliburton II* monthly average down somewhat, but it still remained 14% higher than when *Halliburton II* was before the Court. See Figure 4. It will be interesting to see whether the increased filing activity continues in 2015.

We had already noted a similar pattern at the time of the *Amgen* decision: monthly filings were low on average while the Supreme Court was considering the case and rebound markedly after the decision was issued.

Of course, while we note the temporal correlation, we are not suggesting how much, if any, of the change in the filing activity is *due* to these decisions since we have not considered confounding factors.

Figure 4. **Monthly 10b-5 Filings**
January 2007 – December 2014



Note: Monthly averages computed on the basis of monthly number of filings (regardless of day of event).

10b-5 Filings by Presumption Invoked for Reliance

While *Halliburton II* was pending, many commentators speculated about the possible outcomes and some focused on possible strategies that the plaintiff bar could take in the event that the Supreme Court overruled *Basic*. Ample attention was devoted to the possibility that *Affiliated Ute* would become the main route to class certification should *Basic* be overruled.

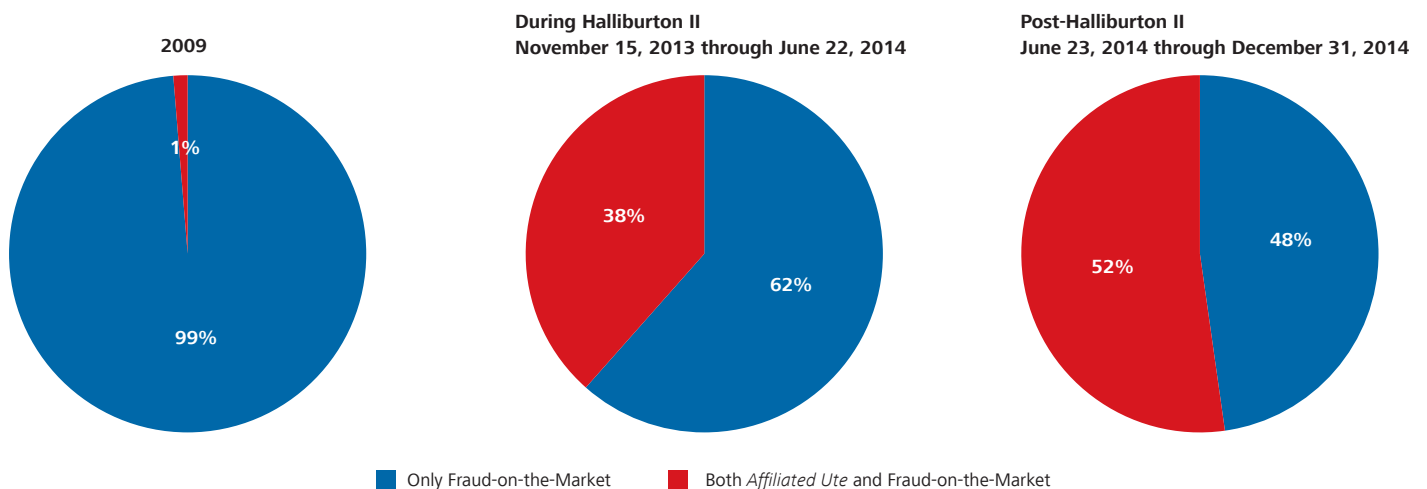
To analyze whether these comments corresponded to pleadings by the plaintiff bar, we reviewed the first available complaint for 10b-5 cases in which holders of common stock were part of the proposed class and coded whether they invoked *Basic* or *Affiliated Ute* or both.

Regardless of the period in which it was filed, every complaint that we reviewed invoked *Basic*'s fraud-on-the-market presumption.⁷ In contrast, the fraction of complaints that also invoked *Affiliated Ute* increased markedly from the period that preceded the grant of *certiorari* in *Halliburton II* to the period that followed it.

To represent the period preceding the grant of *certiorari*, we selected (somewhat arbitrarily) cases filed in 2009. That year also has the advantage of preceding *Halliburton I* and *Amgen* – two other Supreme Court cases that also addressed the fraud-on-the-market presumption at class certification and possibly contributed to the finding shown here.

In 2009, only 1% of the cases invoked *Affiliated Ute* (in addition to *Basic*). In contrast, 38% of the cases filed while *Halliburton II* was pending also invoked *Affiliated Ute*. See Figure 5. Moreover, *Affiliated Ute* has continued to be pled in addition to fraud-on-the-market in 52% of complaints even after the decision in *Halliburton II* was delivered and did not overrule *Basic*. Of course, pleading *Affiliated Ute* at the filing stage is relatively inexpensive; it is not clear how often certification will actually be sought on that basis.

Figure 5. **Presumptions of Reliance Pled at Filing**
Cases Alleging Violation of Rule 10b-5 Where Holders of Common Stock are Part of the Proposed Class



Notes: All cases where "Affiliated Ute" appeared also pled fraud-on-the-market.

Presumption coded on the basis of the first available complaint. Coded *Affiliated Ute* only if the words "Affiliated Ute" appeared in the complaint.

Coded Fraud-on-the-Market if there was discussion of any of the following: fraud on the market, *Basic v. Levinson*, market efficiency, or the integrity of the market price.

One case where the presumption could not be determined (or possibly it was not pled) was excluded from the count.

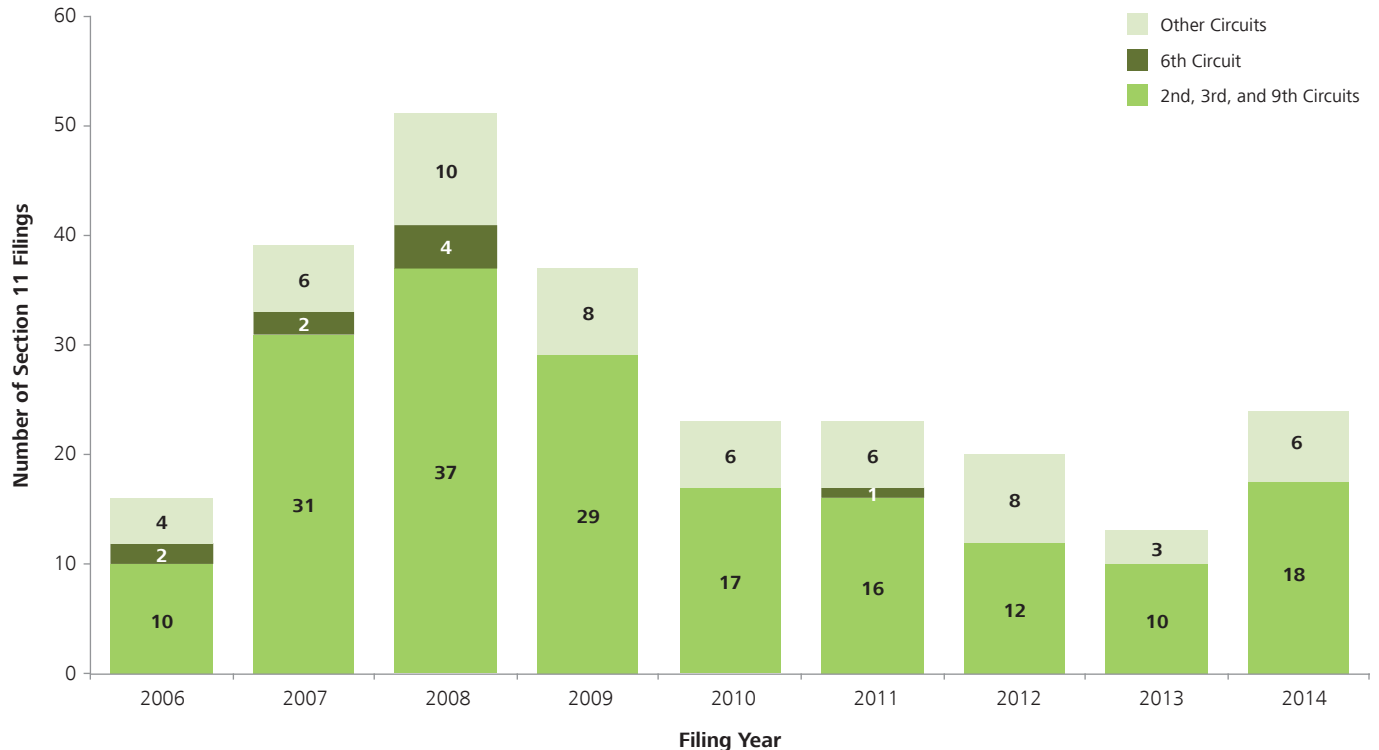
Number of Section 11 Filings and *Omnicare*

In 2014, the Supreme Court granted *certiorari* for another securities class action case, *Omnicare v. Laborers District Council Construction Industry Pension Fund* (“*Omnicare*”). The question Petitioner asked the Supreme Court to decide is “For purposes of a Section 11 claim, may a plaintiff plead that a statement of opinion was ‘untrue’ merely by alleging that the opinion itself was objectively wrong, as the Sixth Circuit has concluded, or must the plaintiff also allege that the statement was subjectively false—requiring allegations that the speaker’s actual opinion was different from the one expressed—as the Second, Third, and Ninth Circuits have held?”⁸

Since 2006, the year in which *Omnicare* was filed, 73% of securities class actions alleging violation of Section 11 of the Securities Act of 1933 have been filed in one of the circuits that Petitioner states currently requires subjective falsity. That fraction is 75% in 2014. Figure 6 shows Section 11 filings, grouped by circuit in the following way: Second, Third, and Ninth in bright green at the bottom (which according to Petitioner require subjective falsity); Sixth in dark green (which according to Petitioner requires only objective wrongness); and all other Circuits in very light green on top.

Interestingly, the Supreme Court decision will come on the heels of what the *Financial Times* has called a “bumper IPO year.”⁹ According to Mergerstat data, 289 IPOs were conducted in 2014, more than in any year since 2000.¹⁰

Figure 6. **Section 11 Filings**
Circuits Grouped by Pleading Requirement as per Petition for a Writ of Certiorari in *Omnicare*
January 2006 – December 2014

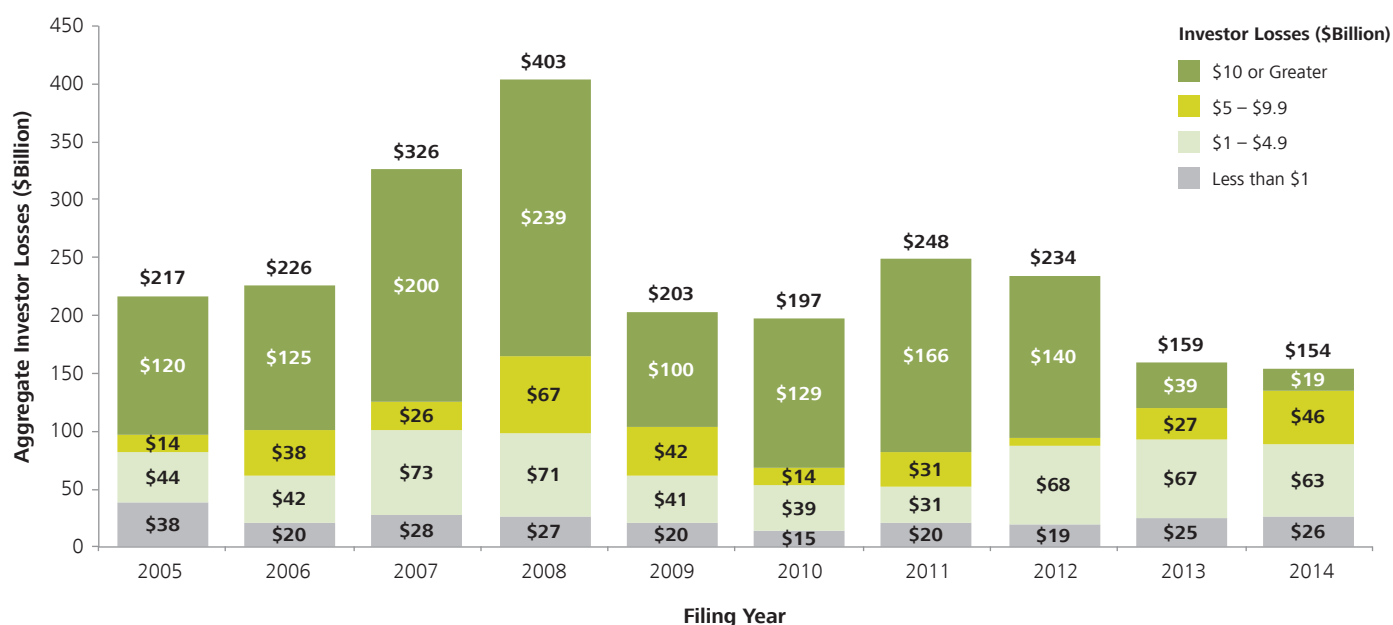


Aggregate Investor Losses

In addition to the number of filings, we also analyze the size of the cases filed using a measure that NERA labels “investor losses.” Aggregate investor losses, as shown in Figure 7, are simply the sum of investor losses across all cases for which they can be computed. In each year, the presence or absence of a handful of cases with large investor losses determines much of the aggregate investor losses. For example, aggregate investor losses in 2011 were \$248 billion, but \$166 billion were associated with just 6 cases (shown in dark green).

In 2014 aggregate investor losses were \$154 billion, approximately the same amount as in 2013. Aggregate investor losses in 2014 and 2013 were noticeably smaller than in previous year. The difference is explained mainly by the almost complete absence of cases with very large investor losses.

Figure 7. **Aggregate Investor Losses (\$Billion) for Federal Filings with Alleged Violations of Rule 10b-5 or Section 11, and in Which Holders of Common Stock Are Part of the Proposed Class**
January 2005 – December 2014



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 since *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 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 the IPO laddering cases and the merger objection cases. NERA reports on securities class actions published before 2012 did not include investor losses for cases with only Section 11 allegations, but such cases are included here. The calculation for these cases is somewhat different than for cases with 10b-5 claims.

Technically, the investor losses variable explains more than half of the variance in the logarithm of settlement size. Investor losses over the class period are measured relative to the S&P 500, using a proportional decay trading model to estimate the number of affected shares of common stock. We measure investor losses only if the proposed class period is at least two days.

Filings by Circuit

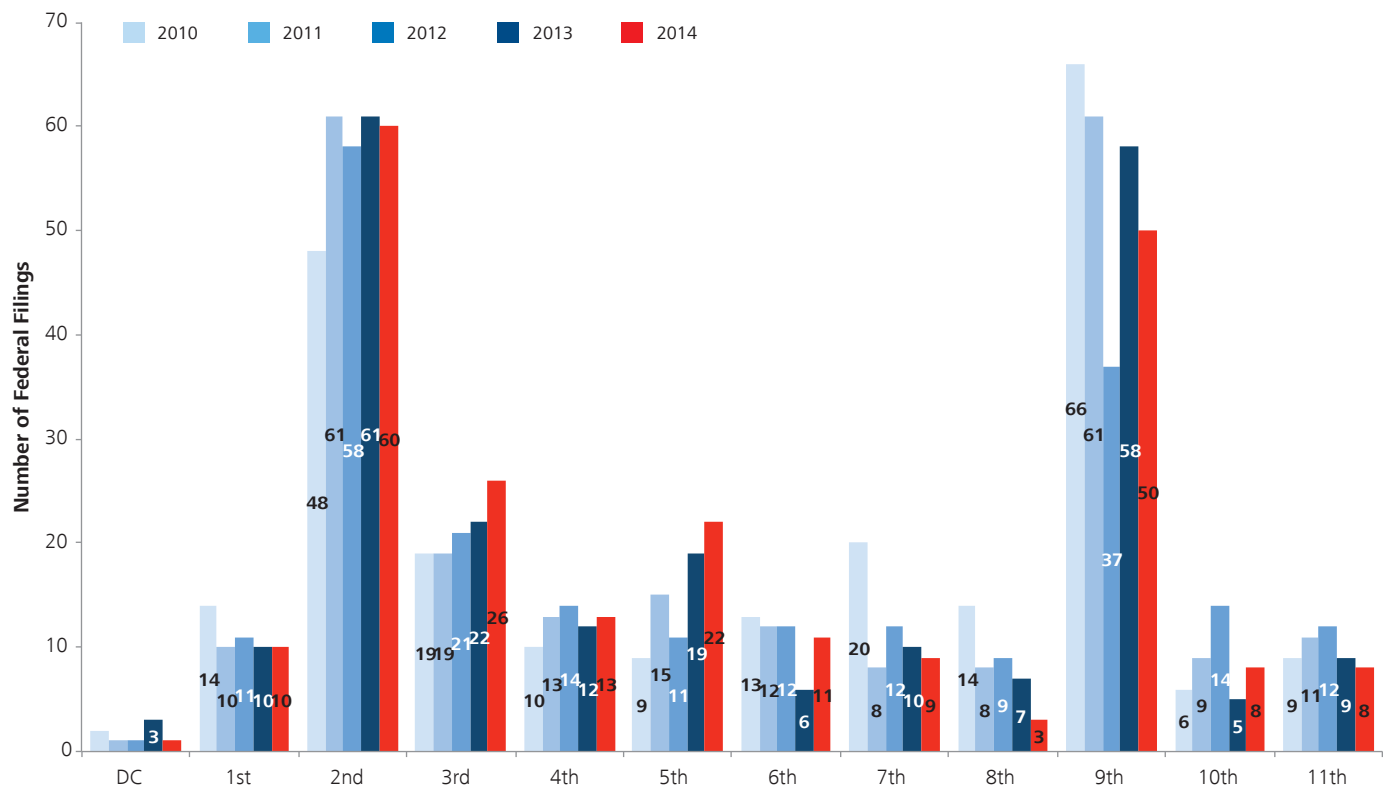
Filings continue to be concentrated in the Second and Ninth Circuits. For the fourth year in a row, the number of filings in the Second Circuit has remained around 60. See Figure 8. But the number of filings alleging violation of Rule 10b-5 in that circuit has decreased by 19% between 2013 and 2014, from 53 to 42 (not shown).

In the Ninth Circuit, the number of filings decreased from 58 to 50 between 2013 and 2014. See Figure 8. But the number of filings alleging violation of Rule 10b-5 in that circuit has hardly changed over the two years, going from 40 to 39.

The Third Circuit also continues to experience a relatively large number of securities class action filings, with 26 in 2014, up from 22 in 2013. See Figure 8. The change is much more pronounced in the number of filings alleging violation of Rule 10b-5, which more than doubled, going from 9 to 20.

The number of filings in the Fifth Circuit has also been on an increasing trend between 2010 and 2014, from 9 to 22. See Figure 8. Filings alleging violation of Rule 10b-5, which are most impacted by the string of Supreme Court decisions *Halliburton I*, *Amgen*, *Halliburton II*, have also been on an increasing trend, going from 4 to 11 between 2010 and 2014.

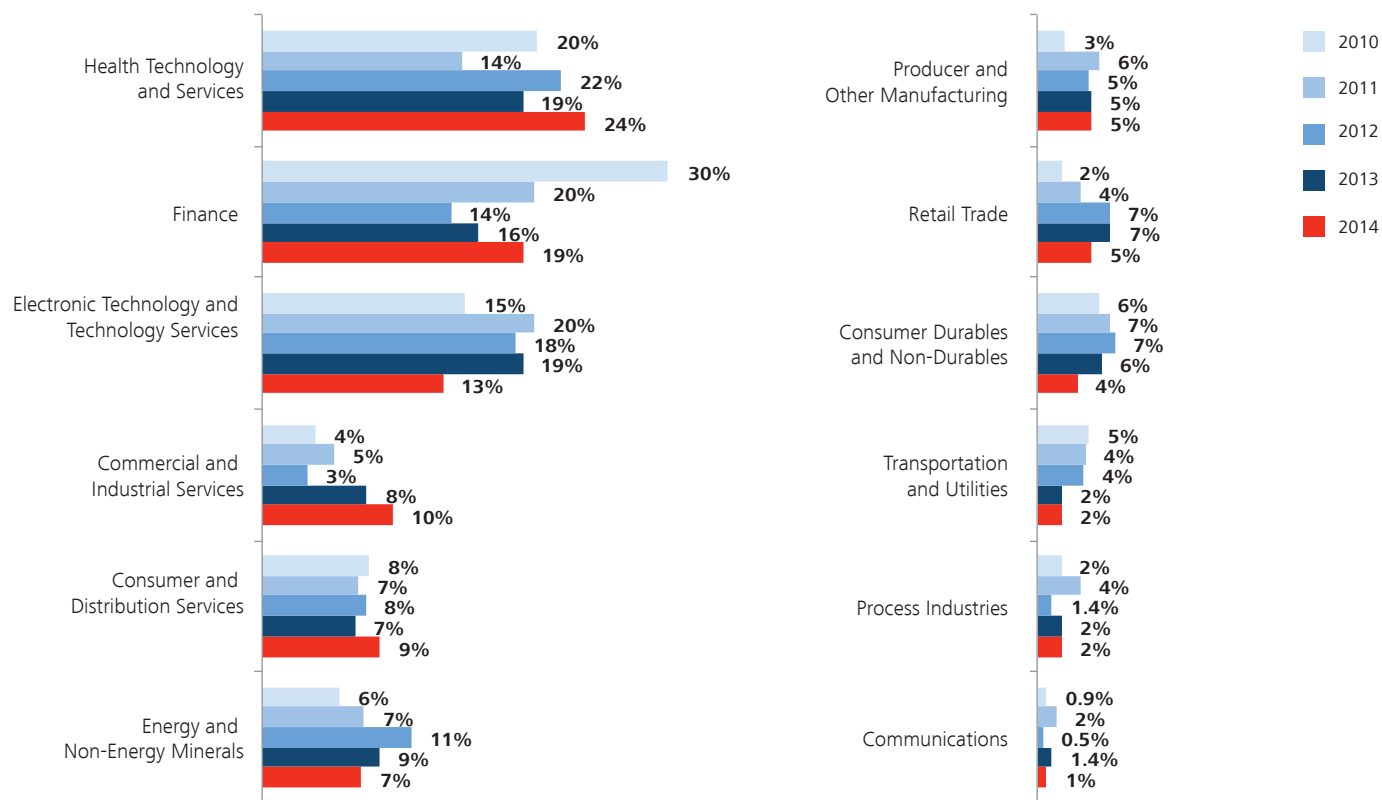
Figure 8. **Federal Filings by Circuit and Year**
January 2010 – December 2014



Filings by Sector

In 2014, the following three sectors taken together continued to account for more than half of primary defendants: health technology and services; finance; and electronic technology and services. In 2014, these sectors represented, respectively, 24%, 19% and 13% of the filings' primary defendants. See Figure 9.

Figure 9. **Percentage of Filings by Sector and Year**
January 2010 – December 2014



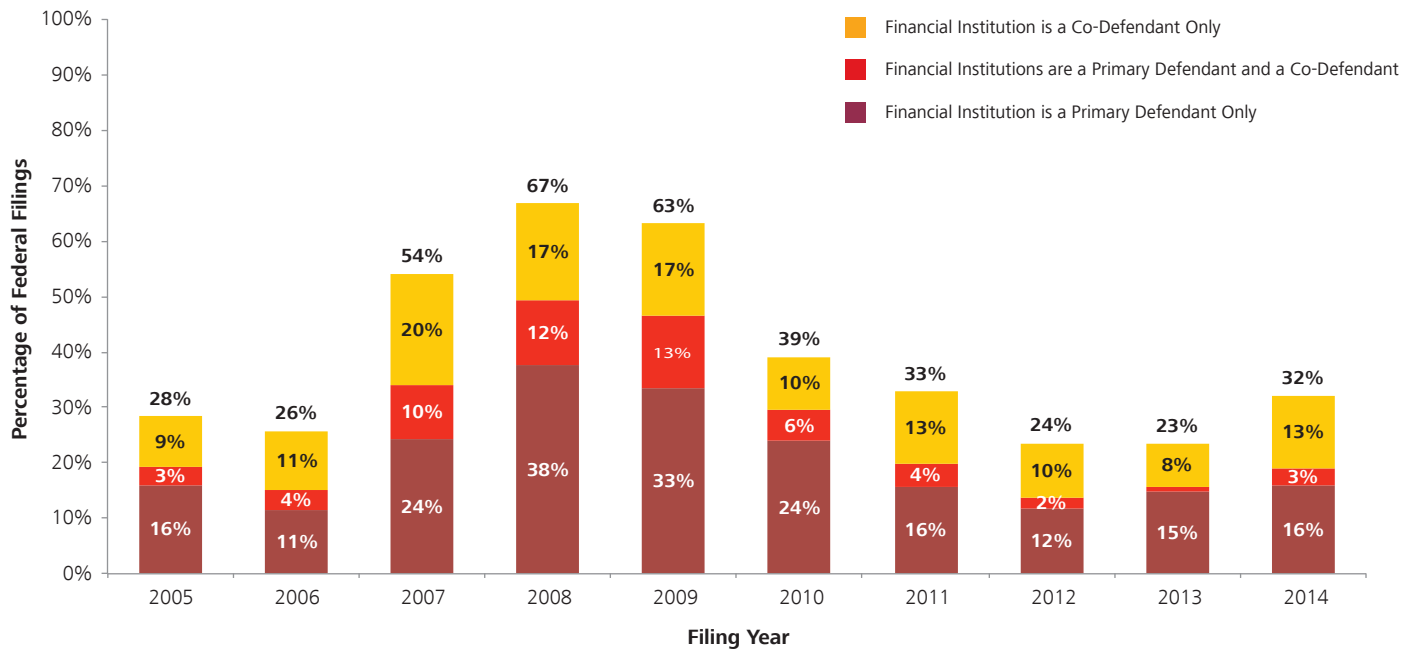
Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Defendants in the Financial Sector

In addition to being targeted as primary defendants, companies in the financial sector are often also targeted as co-defendants.

In 2014, 32% of the securities class actions filed had a defendant in the financial sector (whether primary defendant or co-defendant). That fraction represents a reversal of the trend in recent years. The fraction of filings with a financial sector defendant peaked in 2008 at 67% with the credit crisis and has been declining since then until 2013, at 23%. That fraction is 9 percentage points higher in 2014, at 32%. See Figure 10.¹¹

Figure 10. **Federal Cases in which Financial Institutions Are Named Defendants**
January 2005 – December 2014

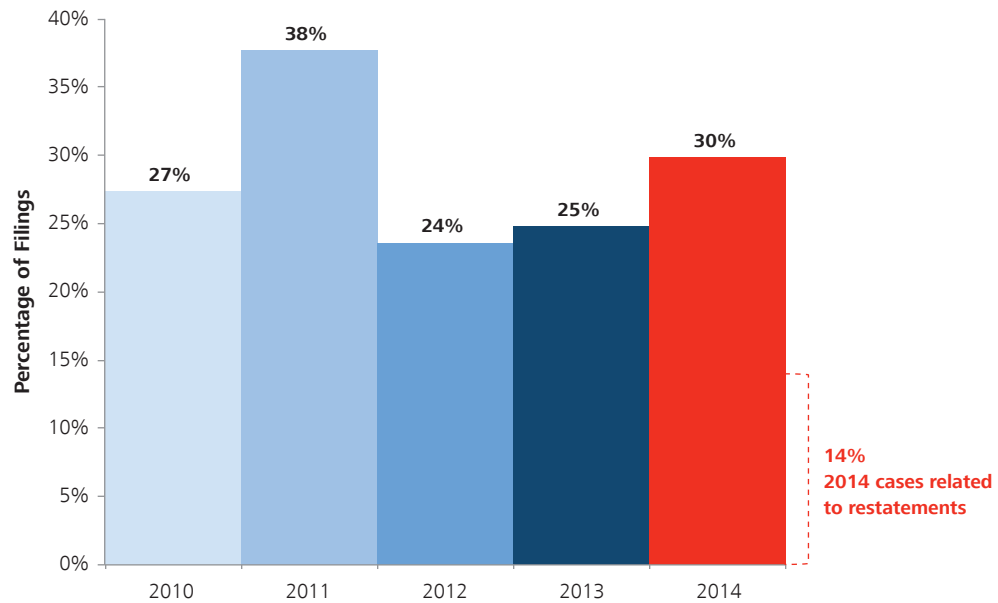


Accounting Allegations

About 30% of filings included accounting allegations in 2014, up from 25% in 2013, but still lower than the recent high of 38% in 2011. See Figure 11.

About 14% of 2014 filings included allegations related to restatements (as well as, potentially, other accounting allegations). That leaves 16% of filings in 2014 with accounting allegations but no restatement-related allegations.

Figure 11. **Accounting Allegations**
January 2010 – December 2014



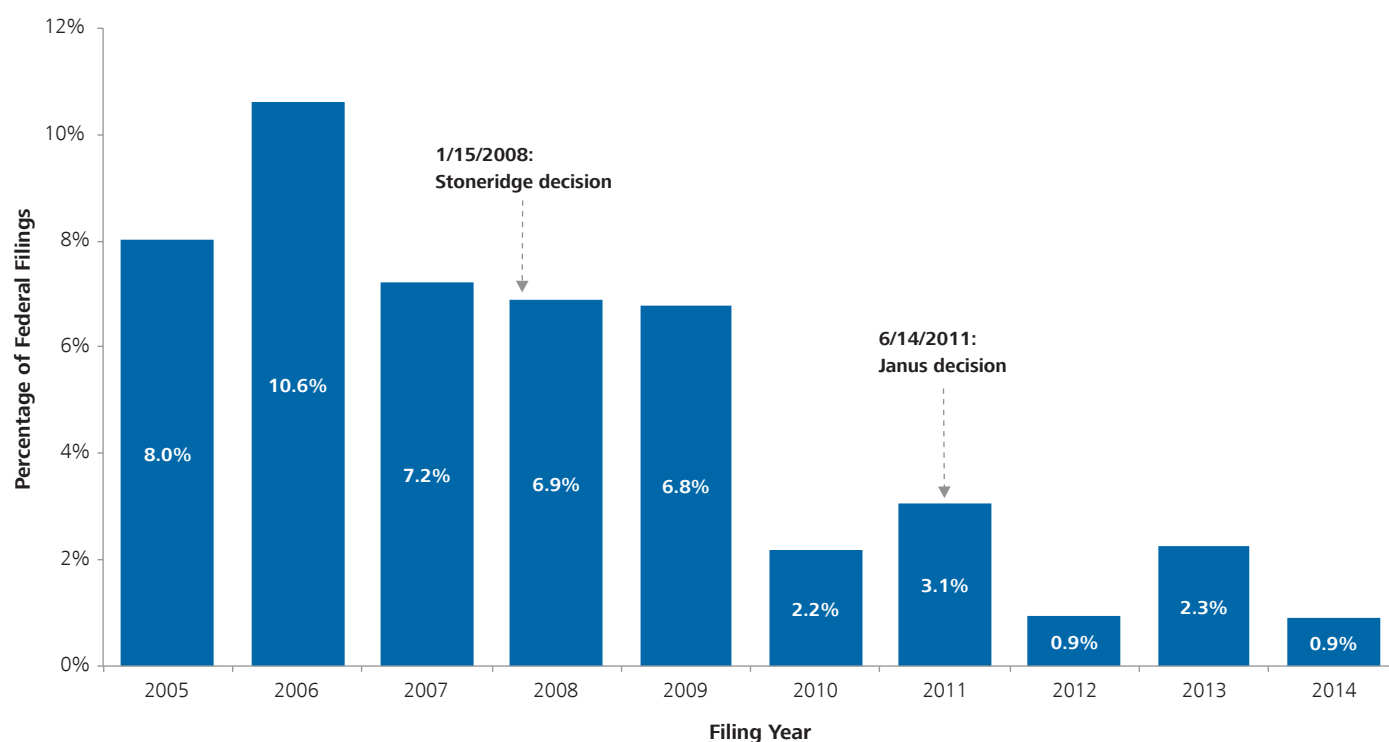
Accounting Co-Defendants

Only 2 securities class actions had an accounting co-defendant in 2014, and in only 1 of these 2 was the co-defendant a Big 4 firm.

The declining trend in the fraction of securities class actions with an accounting co-defendant has continued in 2014. That fraction has declined from 10.6% in 2006 to 0.9% in 2014. See Figure 12. As noted in prior editions of this report, this trend might be the result of changes in the legal environment. The Supreme Court's *Janus* decision in 2011 restricted the ability of plaintiffs to sue parties not directly responsible for misstatements. This decision, along with the Court's *Stoneridge* decision in 2008, which limited scheme liability, may have made accounting firms unappealing targets for securities class action litigation.

For the purposes of this Figure, we considered only co-defendants listed in the first complaint. Based on past experience, accounting co-defendants were sometimes added to later complaints. For example, 3.1% of the first complaints filed in 2011 had accounting co-defendants, while that percentage had grown to 7.5% based on the later complaints. For cases filed in 2012 and 2013, that effect seems to have vanished, though it may be too early to tell because amended complaints for those same cases may yet be filed.

Figure 12. **Percentage of Federal Filings in which an Accounting Firm is a Co-Defendant**
January 2005 – December 2014

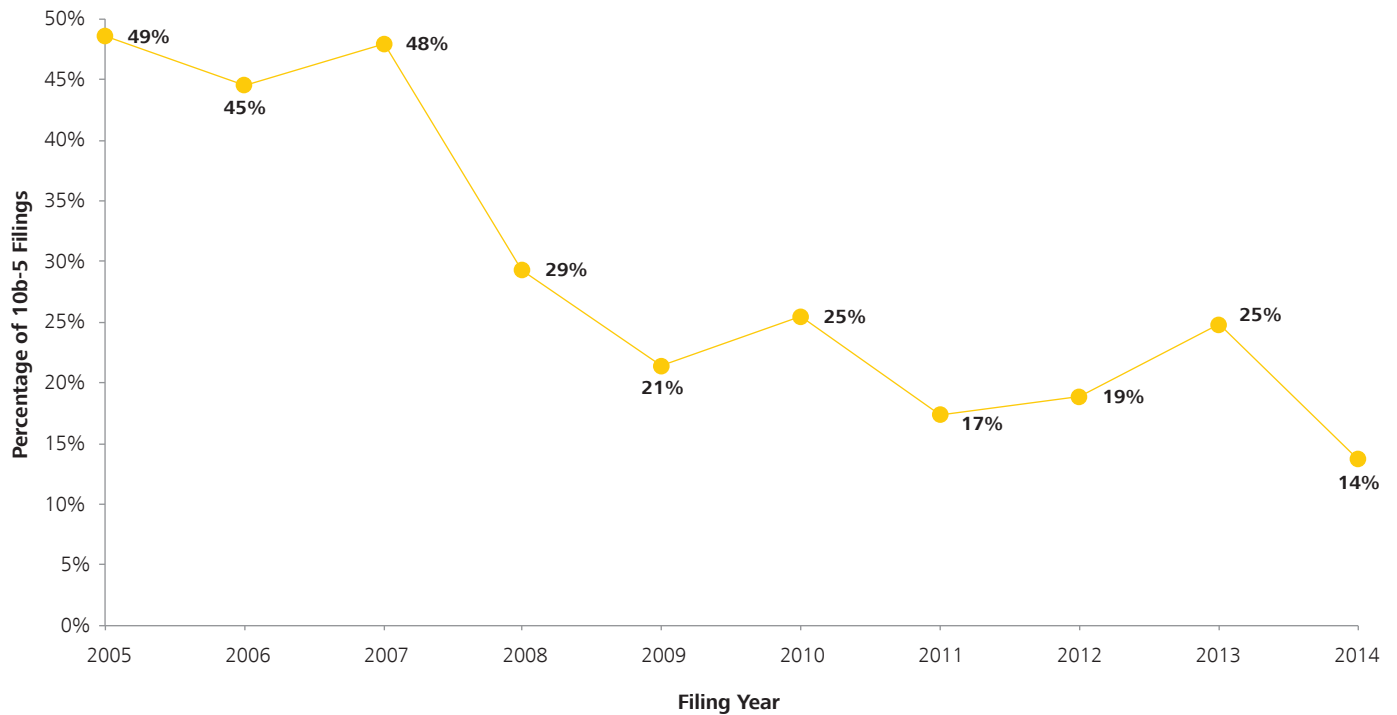


Notes: Coded on the basis of the first (available) complaint.

Insider Sales Allegations

The percentage of 10b-5 class actions that also alleged insider sales has been on a sharply decreasing trend since 2005, dropping from 49% to 14% by 2014. See Figure 13.

Figure 13. **Percentage of Rule 10b-5 Filings Alleging Insider Sales**
By Filing Year, January 2005 – December 2014

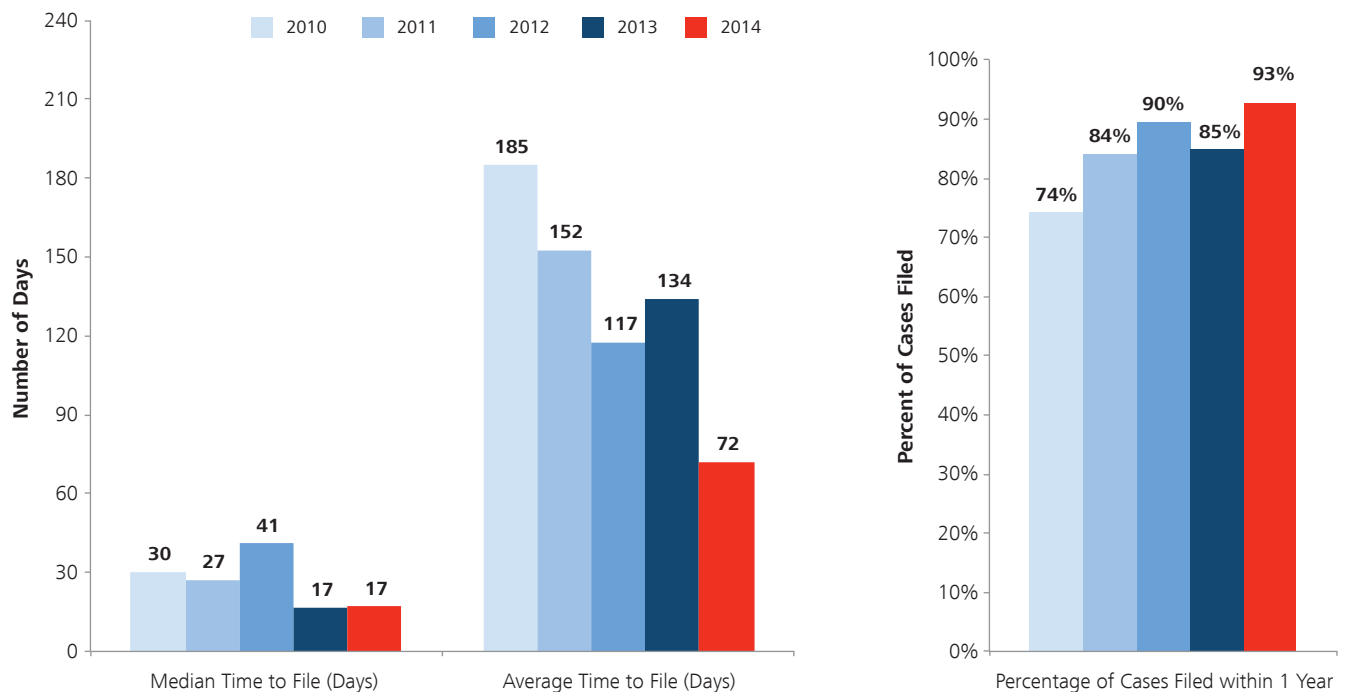


Time to File

The term “time to file” denotes the time between the end of the proposed class period and the filing date of the first complaint. Figure 14 shows three different measures of time to file: median time to file; average time to file; and percentage of cases filed within one year. All three measures indicate an acceleration of the speed of filing over the period 2010-2014.

Additionally, the average time to file, which is the measure that is most influenced by a few cases with very long time to file, has been changing more than the other two measures, suggesting that these few cases with very long time to file are becoming less frequent.

Figure 14. **Time to File from End of Alleged Class Period to File Date for Rule 10b-5 Cases**
January 2010 – December 2014



Analysis of Motions¹²

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

To correctly interpret the Figures, it is important to understand that 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*, if the case settles without the motion being filed again.¹³

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

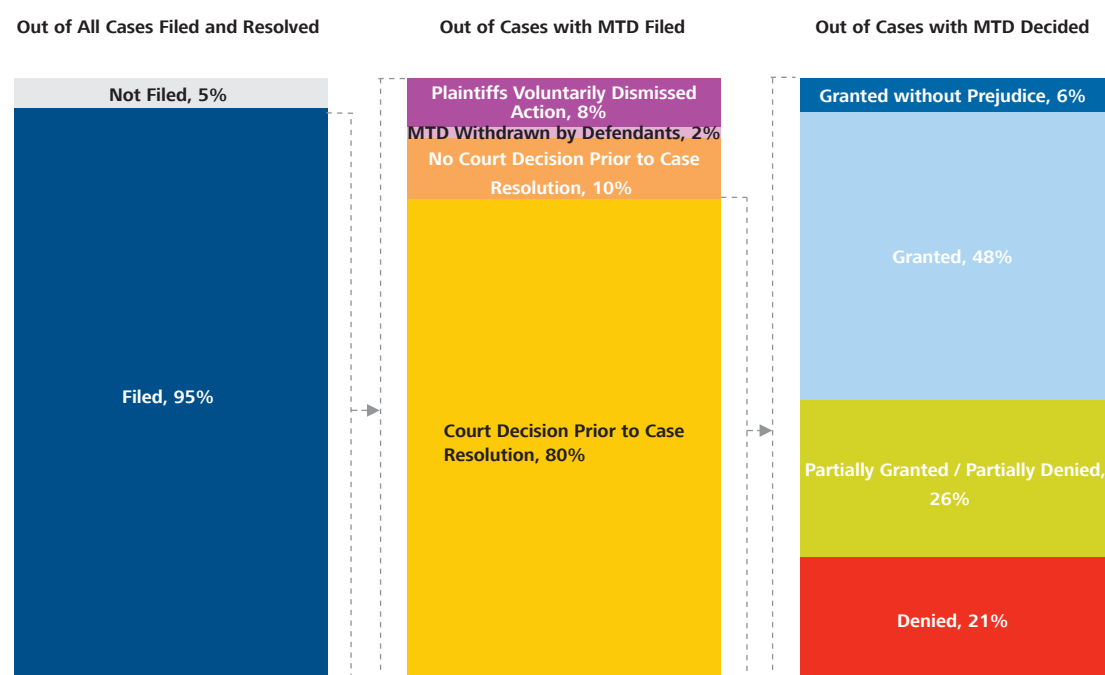
Motions for summary judgment were filed by defendants in only 8% of the securities class actions filed and resolved over the 2000-2014 period, among those we track. Outcomes of the motions for summary judgment are available from NERA, but not shown in this edition.

Motion to Dismiss

A motion to dismiss was filed in 95% of the securities class actions tracked. However, the court reached a decision on only 80% of the motions filed. In the remaining 20% of cases in which a motion to dismiss was filed, either the case resolved before a decision was taken, plaintiffs voluntarily dismissed the action, or the motion to dismiss itself was withdrawn by defendants. See Figure 15.

Out of the motions to dismiss for which a court decision was reached, the following three outcomes account for the vast majority of the decisions: granted (48%),¹⁴ granted in part and denied in part (26%), and denied (21%). See Figure 15.

Figure 15. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2000 – December 2014



Note: Includes cases in which a violation of Rule 10b-5 or Section 11 is alleged and in which common stock is part of the class.

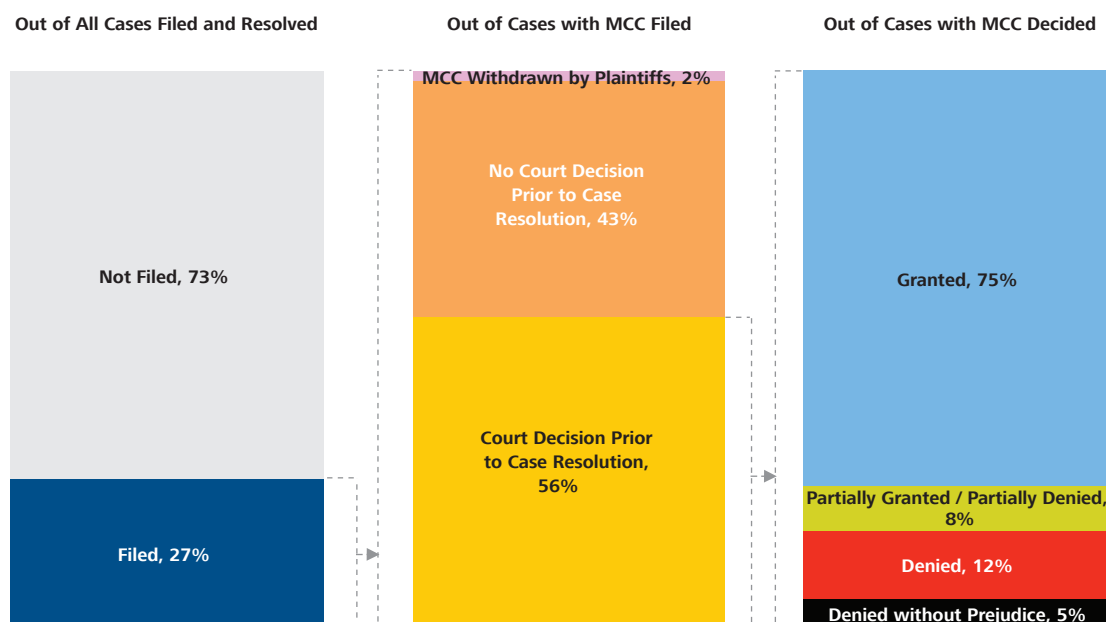
Motion for Class Certification and Post-Halliburton II District Court Decisions

Most securities class actions were settled or dismissed before a motion for class certification was filed: 73% of cases fell into this category. The court reached a decision in only 56% of the cases in which a motion for class certification was filed. See Figure 16. Overall, therefore, only 15% of the securities class actions filed (or 56% of the 27% of cases for which a motion for class certification was filed) reached a decision on the motion for class certification. Finally, of the motions for class certification that were decided, 75% were granted and only 12% were denied. See Figure 16.

As far as we could find, only three motions for class certification in 10b-5 cases were decided by district courts since the Supreme Court decided *Halliburton II*. They are *McIntire v. China MediaExpress Holdings*, *Aranaz v. Catalyst Pharmaceutical Partners*, and *Wallace v. Intralinks*. All three of these decisions considered defendants' arguments about price impact, but ultimately granted plaintiffs' motion to certify the class. Of course, three decisions are far too few to make even a guess on the ultimate impact that *Halliburton II* will have on future certification decisions. Both the plaintiff and the defendant bars have likely just begun exploring all the legal ramifications of *Halliburton II*.

Additionally, the motion for class certification for the *Erica P. John Fund v. Halliburton* case itself is pending again at the district court level, but at press time the Judge has not ruled on it.

Figure 16. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2000 – December 2014



Note: Includes cases in which a violation of Rule 10b-5 or Section 11 is alleged and in which common stock is part of the class.

Trends in Case Resolutions

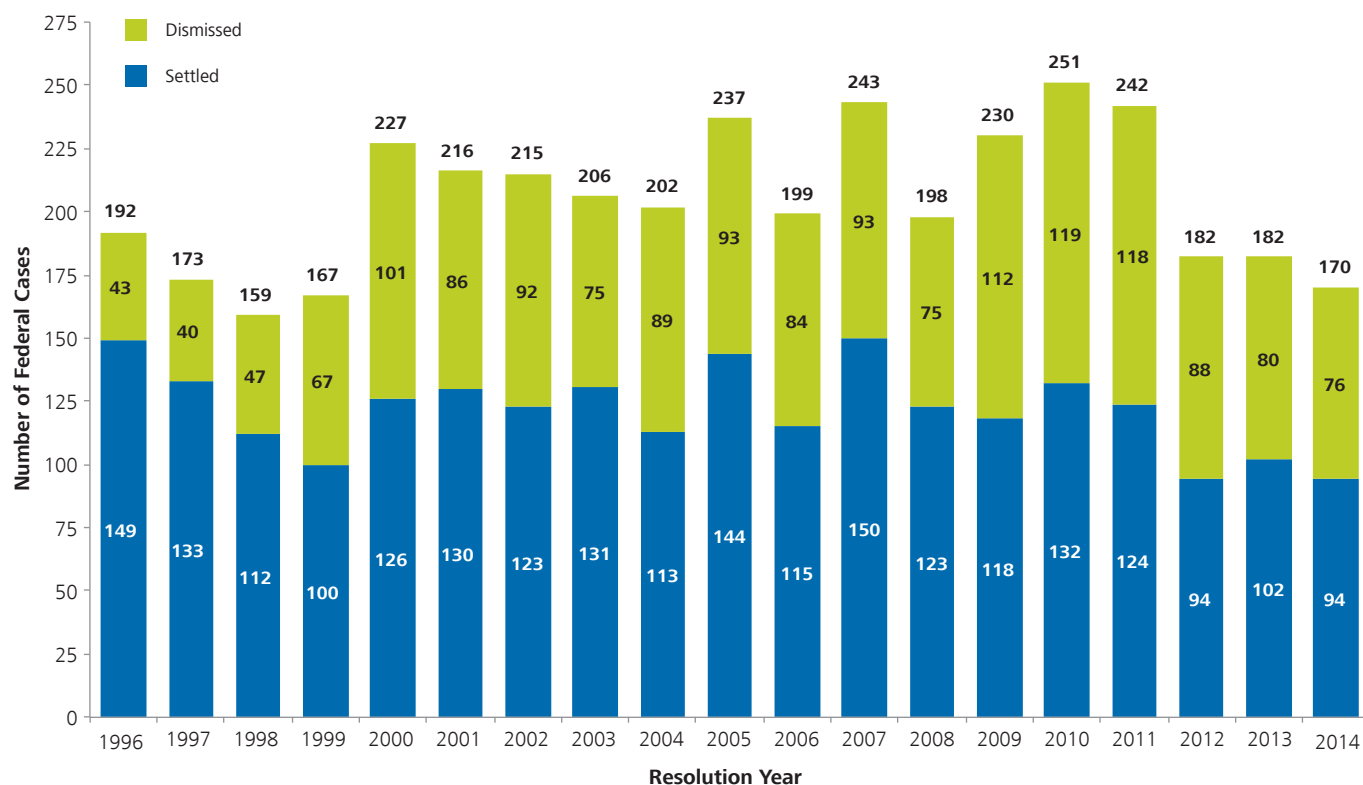
Number of Cases Settled or Dismissed

Only 94 securities class actions settled in 2014, which for the third consecutive year, is at or close to the all-time low since the passage of the PSLRA.¹⁵ The number of securities class actions settled in 2014 is 26% lower than the yearly average in the 2000-2011 period. See Figure 17. (Note that had we displayed only the number of 10b-5 settlements, we would see that for those cases the drop actually occurred one year earlier.)

Dismissals of securities class actions have also been low over the last three years.¹⁶ At least 76 securities class actions were dismissed in 2014.¹⁷ See Figure 17.

The number of cases resolved – either settled or dismissed – has been low for three years. Two factors can potentially contribute to the drop in the number of resolutions: a decrease in filings and a lengthening of the resolution process. We come back to the latter factor below, when discussing the trend in the number of pending cases.

Figure 17. **Number of Resolved Cases: Dismissed or Settled**
January 1996 – December 2014



Note: Analysis excludes IPO ladder cases. Dismissals may include dismissals without prejudice and dismissals under appeal.

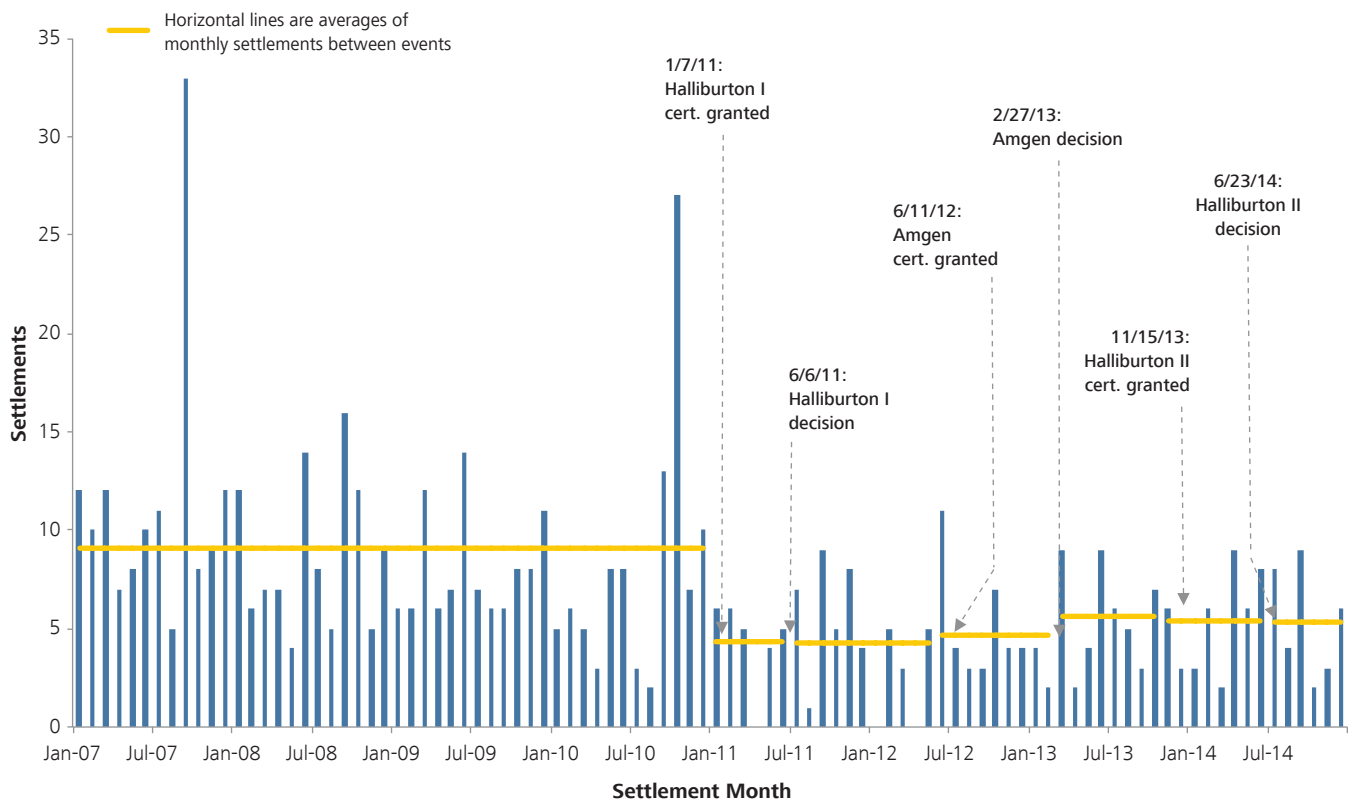
Number of 10b-5 Cases Settled and Recent Supreme Court Cases

The number of 10b-5 filings and number of 10b-5 settlements behaved differently since *Halliburton II*. The average monthly number of 10b-5 filings increased (as seen above, Figure 4). The average monthly number of settlements hardly changed: it was 5.4 while *Halliburton II* was pending at the Supreme Court level, and 5.3 since. See Figure 18.

By comparison, the average monthly number of settlements increased by 21% after *Amgen*.

While we again note a temporal correlation, we are not suggesting how much, if any, of the change in the settlement activity is *due* to these decisions since we have not considered confounding factors.

Figure 18. **Monthly 10b-5 Settlements**
January 2007 – December 2014



Note: Monthly averages computed on the basis of the monthly number of settlements (regardless of the day of the event).

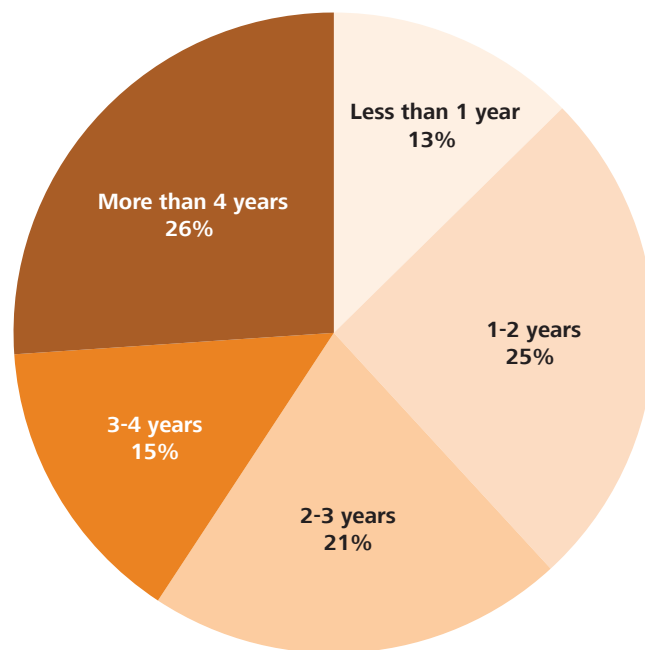
Time to Resolution

The term “time to resolution” indicates the time between filing of the first complaint and resolution (whether settlement or dismissal). We analyzed time to resolution for all securities class actions filed between 2000 and 2010. Including only class actions filed through 2010 in our analysis allows us to adopt a simple strategy to obtain numbers that are not affected by survivorship bias (the bias that would be introduced by the fact that more recently filed class actions would be observed only if they resolved quickly). As a check, we also statistically estimated a survival model including the last 4 years and found results that are qualitatively similar to those discussed here. From our analysis, we exclude IPO laddering cases and merger objection cases because the former took much longer to resolve and the latter usually much shorter.

Of the securities class actions analyzed, 13% resolved in less than 1 year, 25% took between 1 and 2 years to resolve, 21% took between 2 and 3 years, 15% took between 3 and 4 years, and 26% took more than 4 years to resolve. See Figure 19.

In other words, 59% of the securities class actions filed were settled or dismissed within 3 years.

Figure 19. **Time from First Complaint Filing to Resolution**
Cases Filed January 2000 – December 2010



Note: Excludes IPO laddering cases and merger objections.

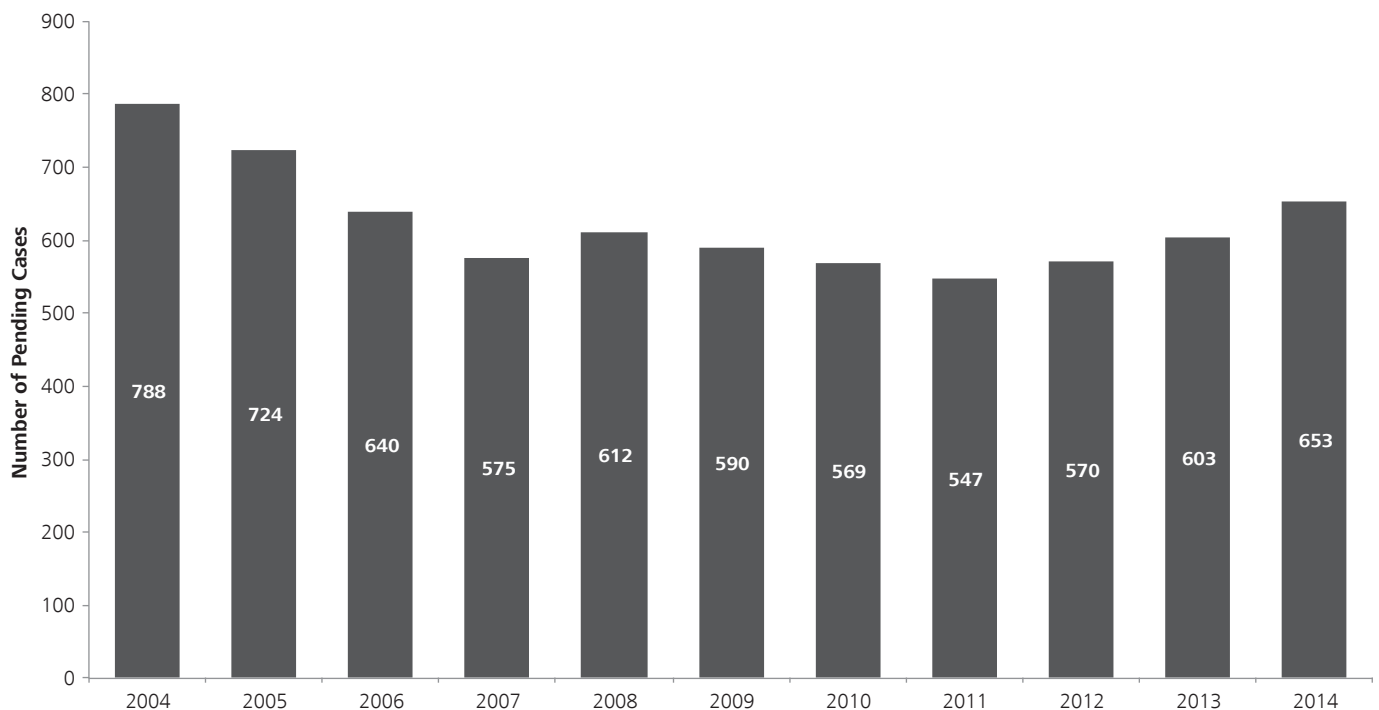
Number of Cases Pending

The number of securities class actions pending in the federal system shrunk from 788 in 2004 to 547 in 2011. See Figure 20. This information can be of interest on its own.

Additionally, when the number of new filings is constant, the change in the number of pending cases can be indicative of whether the time to resolve is shortening or lengthening. So the change in the number of pending cases supplements the previous Figure on time to resolve.

Since 2011, the number of pending cases has been increasing, reaching 653 in 2014, a 19% increase from the trough. This increase occurred over a period in which the number of filings was roughly constant thereby suggesting a slow-down of the resolution process over that period.

Figure 20. **Number of Pending Federal Cases**



Note: The figure excludes, in each year, cases that had been filed more than eight years earlier. The figure also excludes IPO laddering cases.

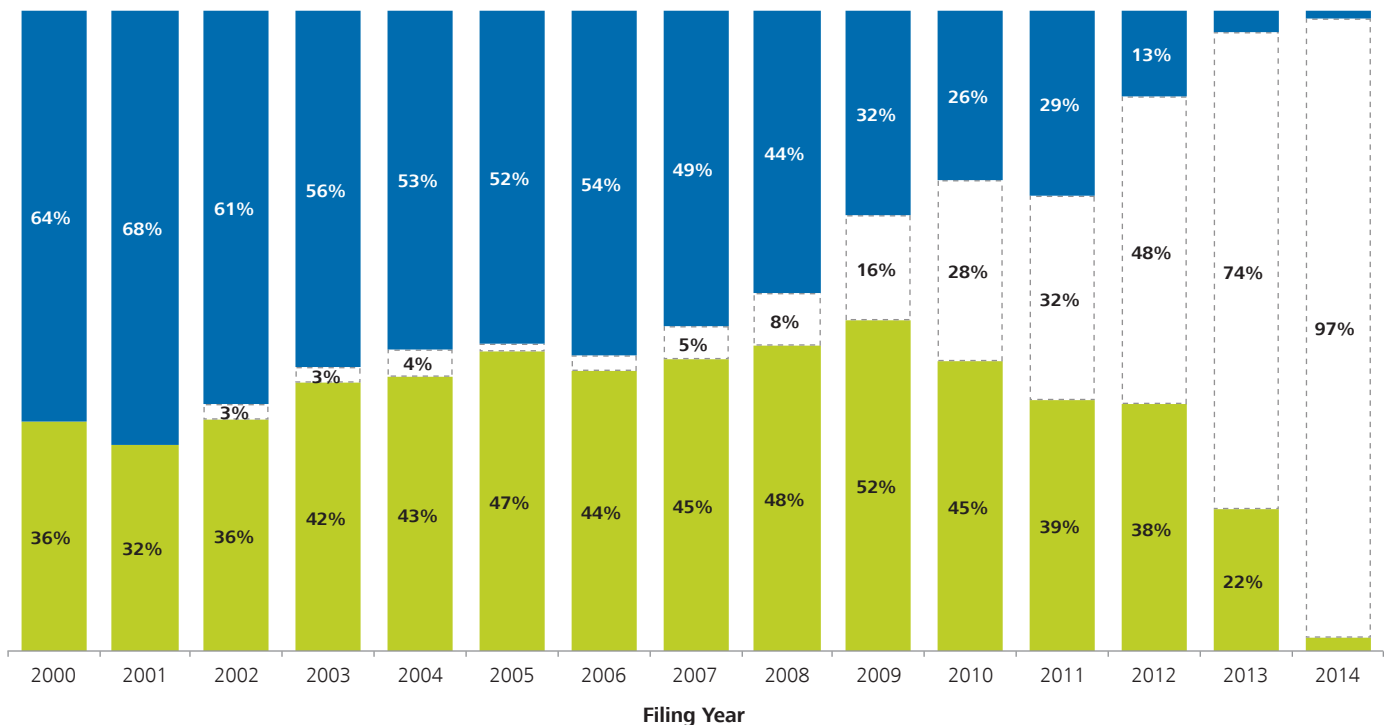
Dismissal Rates

Figure 21 shows the dismissal rate by filing cohort. It is calculated as the fraction of cases ultimately dismissed out of all cases filed in a given year.¹⁸

Dismissal rates have increased from 32%-36% for cases filed in 2000-2002 to 43%-47% for cases filed in 2004-2006, and then to at least 45%-52% for cases filed in 2007-2009 when most of the credit crisis related filings occurred.

While dismissal rates have been on a rising trend since 2000 at least up to 2009, two opposing factors make us cautious about drawing conclusions for recent years: the large fraction of cases awaiting resolution among those filed in recent years, and the possibility that recent dismissals will be successfully appealed or re-filed.

Figure 21. **Status of Cases as Percentage of Federal Filings by Filing Year**
January 2000 – December 2014



Notes: Analysis excludes IPO laddering, merger objection cases, and verdicts.
Dismissals may include dismissals without prejudice and dismissals under appeal.

■ Settled Cases □ Pending ■ Dismissed

Trends in Settlements

Settlement Amounts

We provide multiple statistics about settlement amounts; each provides information about a different facet of securities litigation. We begin by discussing two measures of average settlement amount and one measure of median settlement amount. In calculating all three of these measures, we exclude the IPO laddering cases, merger objections, and cases that settle with no cash payment to the class. The two measures of average settlement amount differ from each other because settlements that exceed \$1 billion are excluded from the first that we present but not from the second.

This year, all three measures indicate that settlement amounts plummeted in 2014.

We also provide the distribution of settlement amounts and the list of top 10 settlement amounts ever.

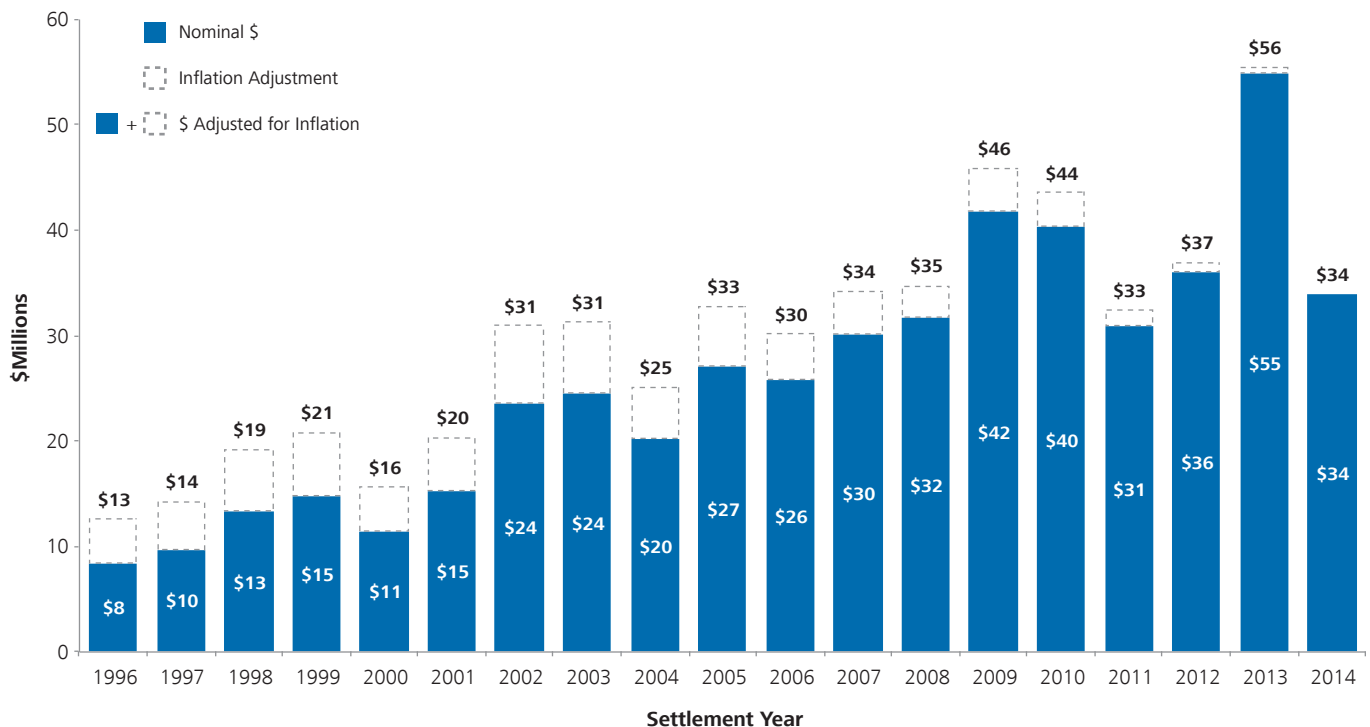
Average Settlement Amounts

Average settlement amounts plummeted 38% between 2013 and 2014, according to our first measure, which excludes settlements over \$1 billion. At \$34 million, the average for 2014 is much lower than the average for 2013, but in line with 2012 and 2011. See Figure 22.

As a further analysis of 2014 settlements, we calculated separate averages for settlements that received judicial approval before and after *Halliburton II* was decided. The average in the first part of the year was \$40 million, while the average settlement in the second part of the year was \$29 million.

Last, we have added inflation-adjusted amounts to our Figure 22.¹⁹ While the average settlement is 4.03 times as large in 2014 as in 1996 on a nominal basis, on an inflation-adjusted basis it is 2.68 times as large.

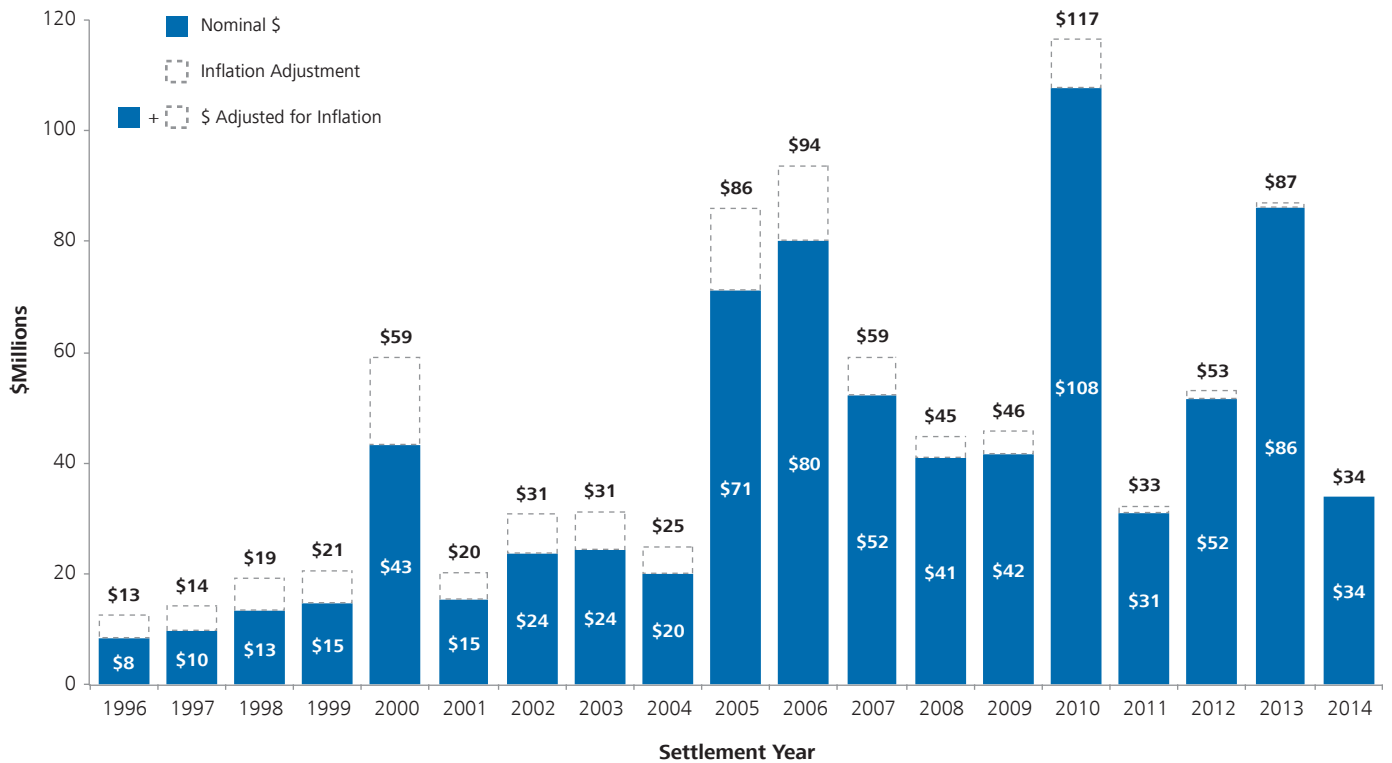
Figure 22. **Average Settlement Value (\$Million)**
Excluding Settlements over \$1 Billion,
and Excluding IPO Laddering, Merger Objections and Settlements for \$0 to the Class
 January 1996 – December 2014



Note: Inflation adjustment to October 2014; based on CPI.

Figure 22 and Figure 23 differ only in that Figure 22 excludes settlement amounts above \$1 billion while Figure 23 includes them. Given that there was no settlement exceeding \$1 billion in 2014, the 2014 average settlement amount is the same in both Figures. On the other hand, in 2013 a settlement that exceeded \$1 billion did receive judicial approval (BoFA Merrill, see Table 1 below). Thus, the average settlement amount in 2013 is even higher under this measure, \$86 million, than it was under the previous measure and the decrease from 2013 to 2014 even more pronounced at 61% under this second measure than under the first.

Figure 23. **Average Settlement Value (\$Million)**
Excluding IPO Laddering, Merger Objections and Settlements for \$0 to the Class
 January 1996 – December 2014



Note: Inflation adjustment to October 2014; based on CPI.

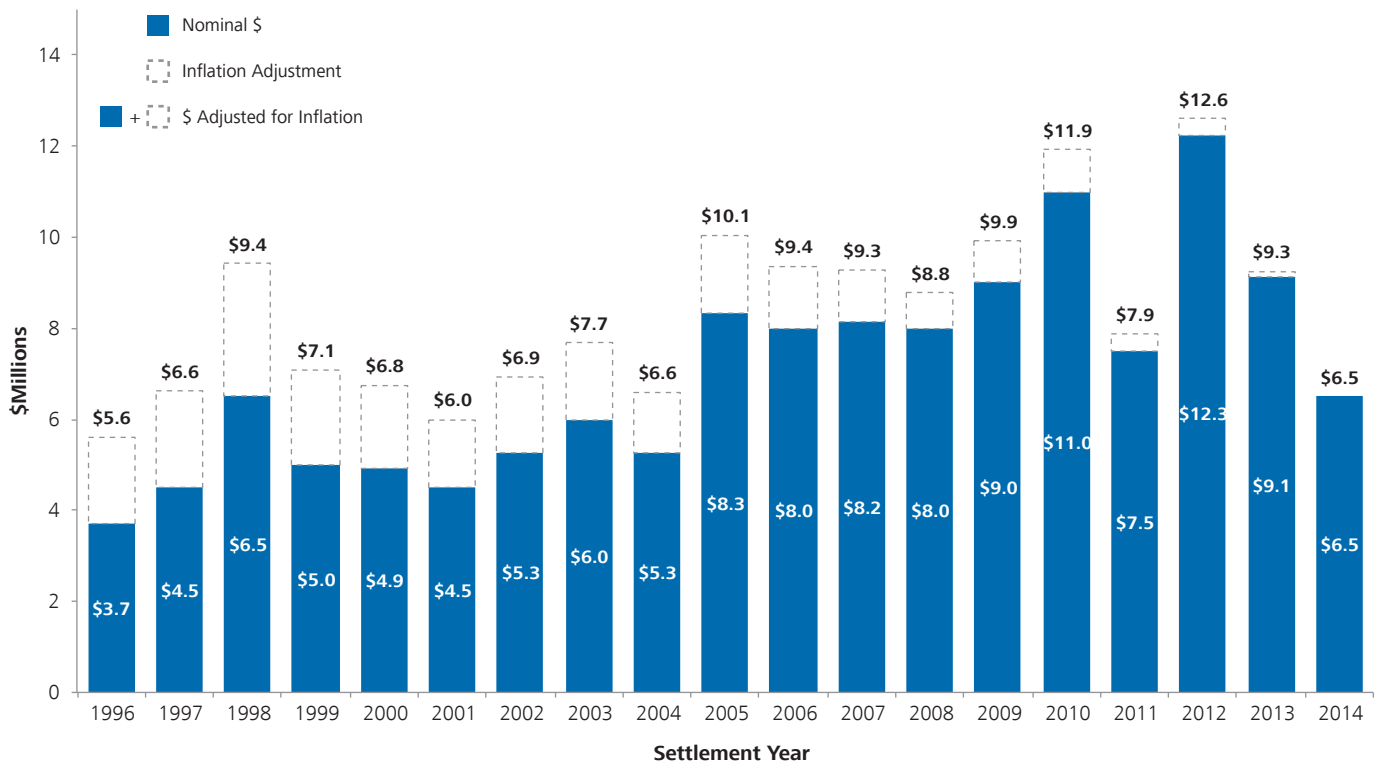
Median Settlement Amounts

The median settlement amount in 2014 was \$6.5 million, the lowest median settlement in ten years. See Figure 24.

Similar to the average, the median also showed a sharp decrease between 2013 and 2014, but given that medians are more robust to extreme values than averages, the decrease in median amount over the two years is smaller at 29%.

On an inflation-adjusted basis, 2014 median settlement was the third-lowest since the passage of the PSLRA: only in 1996 and in 2001 were median settlement amounts lower on an inflation-adjusted basis.

Figure 24. **Median Settlement Value (\$Million)**
Excluding IPO Laddering, Merger Objections and Settlements for \$0 to the Class
January 1996 – December 2014



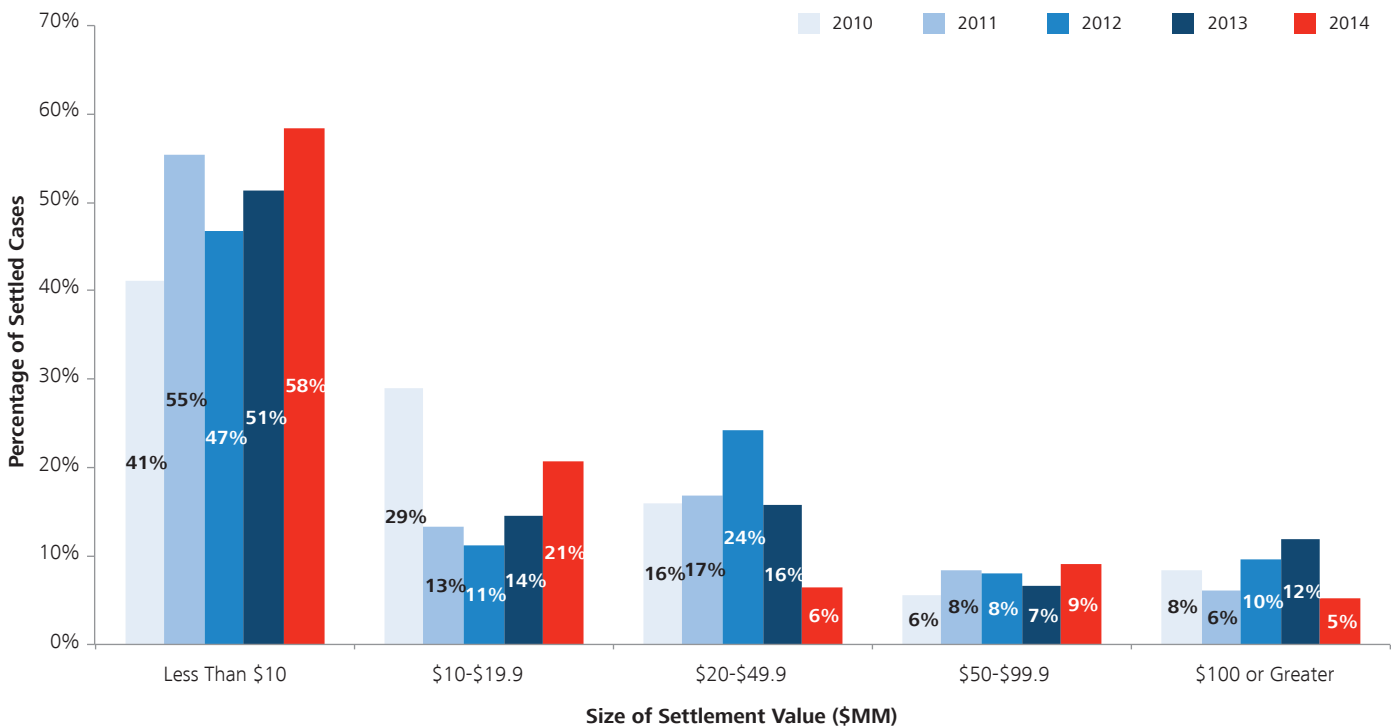
Note: Inflation adjustment to October 2014; based on CPI.

Distribution of Settlement Amounts

The fraction of cases settled for less than \$10 million was larger in 2014 than at any time during the previous four years: 58% of the approved settlements were for amounts in that range. The fraction of cases that settled in the \$10-\$20 million range (the second-lowest range) also increased compared to 2013. See Figure 25.

Consistent with Figures 23 and 24, Figure 25 excludes settlements in merger objection cases and in cases that settled with no cash payment for the class.²⁰

Figure 25. **Distribution of Settlement Values**
Excluding Merger Objections and Settlements for \$0 to the Class
January 2010 – December 2014



Note: IPO laddering cases are not relevant for this figure because they settled in 2009.

The Ten Largest Settlements of Securities Class Actions of All Time

The ten largest settlements of securities class actions of all time are shown in Table 1. No 2014 settlement made the top 10. The newest addition is the settlement approved in 2013 associated with Bank of America's acquisition of Merrill Lynch.

Table 1. **Top 10 Securities Class Action Settlements (As of December 31, 2014)**

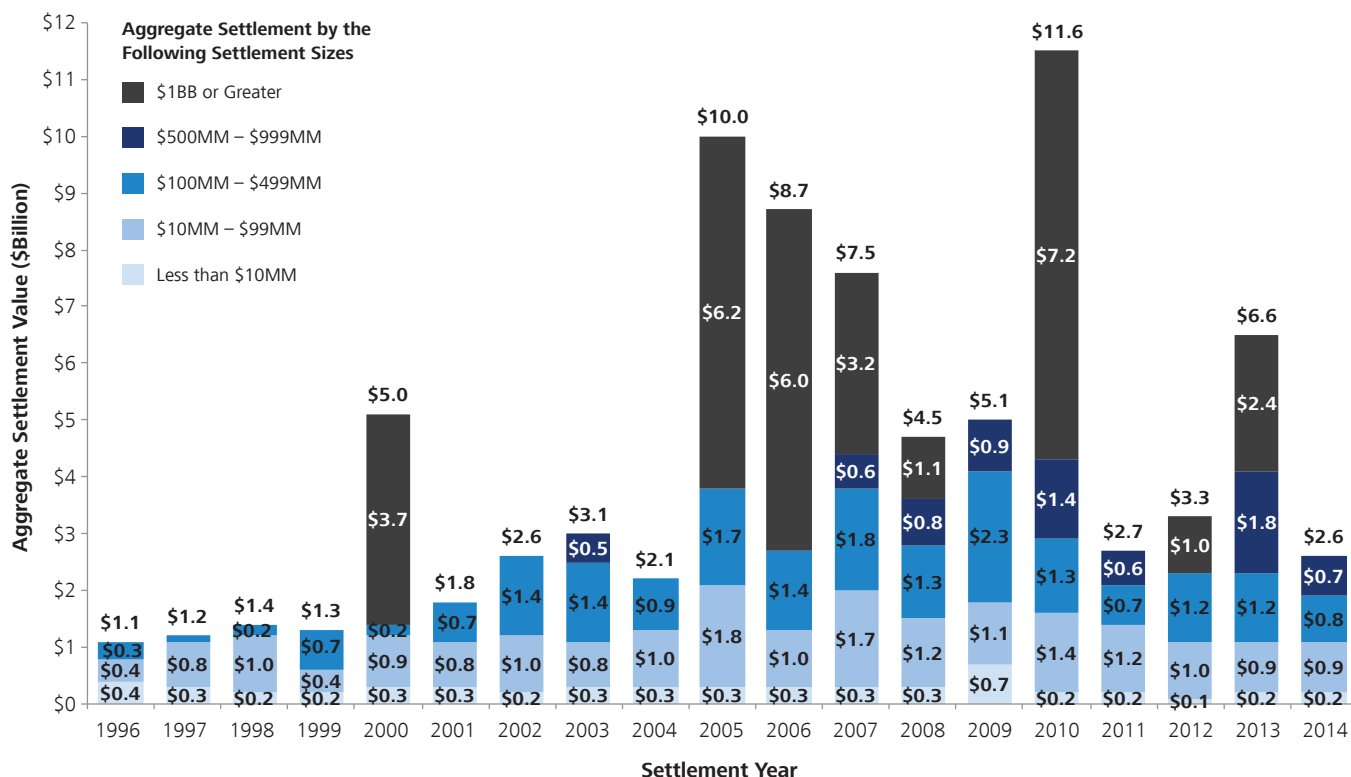
Ranking	Case Name	Settlement Years	Total Settlement Value (\$MM)	Financial Institutions	Accounting Firms	Plaintiffs' Attorneys' Fees and Expenses
				Value (\$MM)	Value (\$MM)	Value (\$MM)
1	ENRON Corp.	2003-2010	\$7,242	\$6,903	\$73	\$798
2	WorldCom, Inc.	2004-2005	\$6,196	\$6,004	\$103	\$530
3	Cendant Corp.	2000	\$3,692	\$342	\$467	\$324
4	Tyco International, Ltd.	2007	\$3,200	No codefendant	\$225	\$493
5	In re 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	Nortel Networks (I)	2006	\$1,143	No codefendant	\$0	\$94
8	Royal Ahold, NV	2006	\$1,100	\$0	\$0	\$170
9	Nortel Networks (II)	2006	\$1,074	No codefendant	\$0	\$89
10	McKesson HBOC, Inc.	2006-2008	\$1,043	\$10	\$73	\$88
Total			\$29,764	\$13,259	\$1,040	\$2,913

Aggregate Settlements

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

Aggregate settlements were \$2.6 billion in 2014, much less than the \$6.6 billion approved in 2013. See Figure 26. This Figure illustrates that, over the years, much of the large fluctuations in aggregate settlements have been driven by settlements over \$1 billion. In contrast, settlements under \$10 million, despite often accounting for about one-half of the number of settlements in a given year, account for a very small fraction of aggregate settlements.

Figure 26. **Aggregate Settlement Value (\$Billion) by Settlement Size**
January 1996 – December 2014



Investor Losses versus Settlements

As noted above, our investor losses measure 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.

In general, settlement size grows as investor losses grow, but the relationship is not linear. Settlement size grows less than proportionately with investor losses, based on analysis of data from 1996 to 2014. 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 losses was 17.9% 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 27.

Our findings about the ratio of settlement amount to 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.

Figure 27. **Median of Settlement Value as a Percentage of Investor Losses**
By Level of Investor Losses; January 1996 – December 2014



Note: Excludes settlements for \$0 to the class.

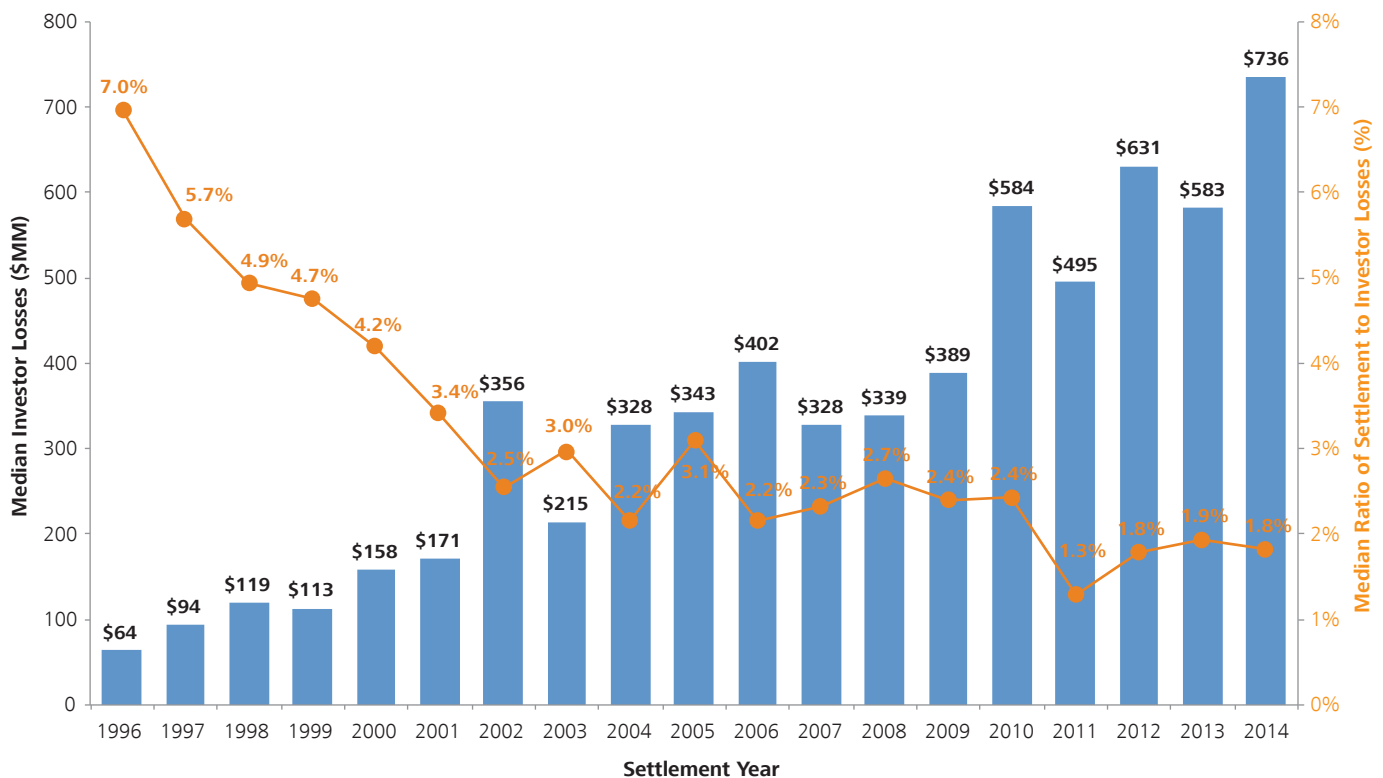
Median Investor Losses Over Time

Median investor losses for settled cases have been on an upward trend since the passage of the PSLRA. As just described, the median ratio of settlement size to investor losses decreases as investor losses increase. Over time, the increase in median investor losses has corresponded to a decreasing trend of the median ratio of settlement to investor losses. Of course, there are year-to-year fluctuations.

The median ratio of settlements to investor losses decreased from 1.9% in 2013 to 1.8% in 2014. See Figure 28.

Additionally the median ratio was 1.4% post-*Halliburton II* suggesting that cases are settling for less. It is going to be interesting to see whether this trend continues in 2015.

Figure 28. **Median Investor Losses and Median Ratio of Settlement to Investor Losses**
By Settlement Year; January 1996 – December 2014



Plaintiffs' Attorneys' Fees and Expenses

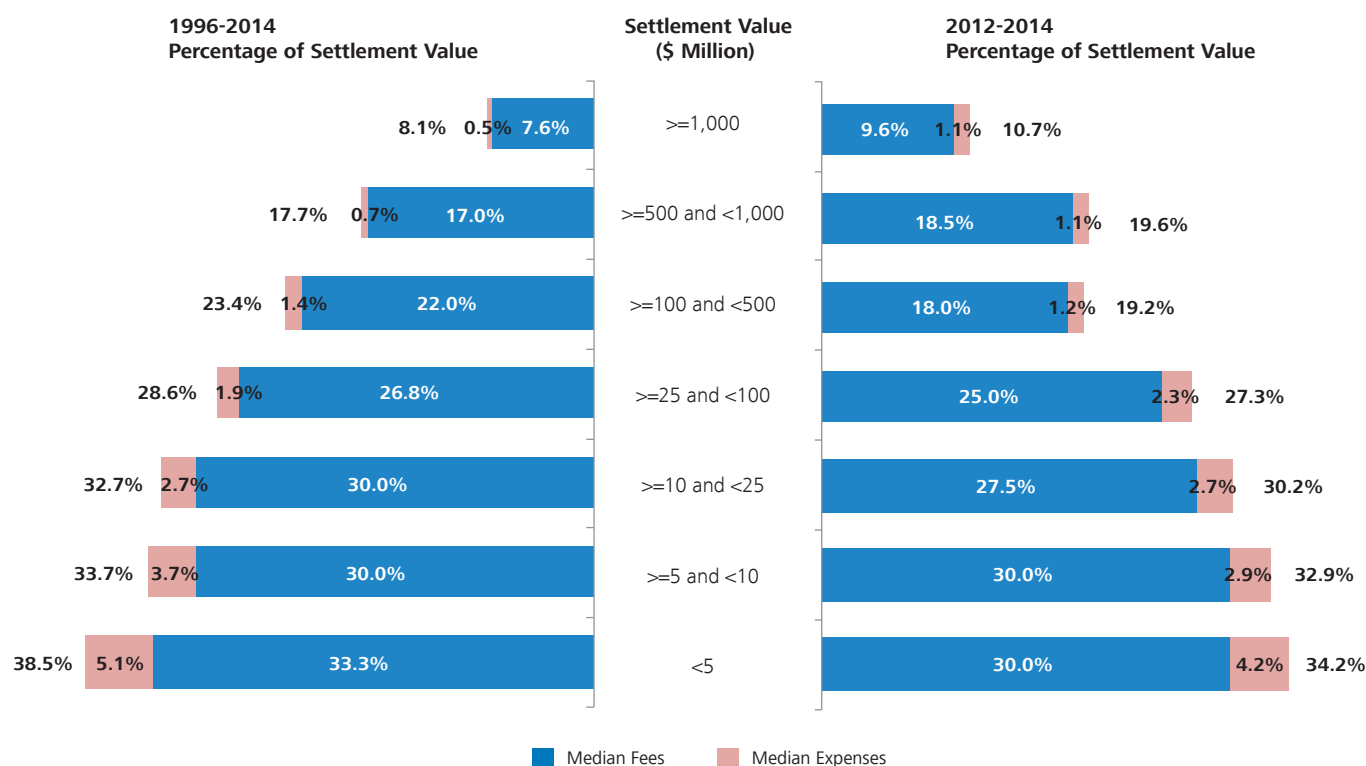
Usually, plaintiffs' attorneys' remuneration is awarded as a fraction of any settlement amount in the forms of fees, plus expenses. Figure 29 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values. The data shown in this Figure exclude settlements for merger objection cases and cases with no cash payment to the class.

In Figure 29, we illustrate two patterns: 1) Typically, fees grow with settlement size but less than proportionally (*i.e.*, the fee percentage shrinks as the settlement size grows). 2) Fee percentages have been decreasing over time, except for fees awarded on very large settlements.

First, to illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and report median fee percentage for each group. Focusing on the period 2012-2014 (the right portion of the Figure), we see that for settlements below \$5 million, median fees represented 30% of the settlement; these percentages generally fall with settlement size, reaching 9.6% in fees for settlements above \$1 billion.

Second, to illustrate that fee percentages have been decreasing over time (except for very large settlements), we report our findings both for the period 1996-2014 and for the sub-period 2012-2014. The comparison shows that fee percentages have decreased for settlements up to \$500 million in the late sub-period. For settlements above \$500 million, fees have increased.

Figure 29. **Median of Plaintiffs' Attorneys' Fees and Expenses, by Size of Settlement**



Notes: Excludes merger objection cases and cases with no cash payment to the class.

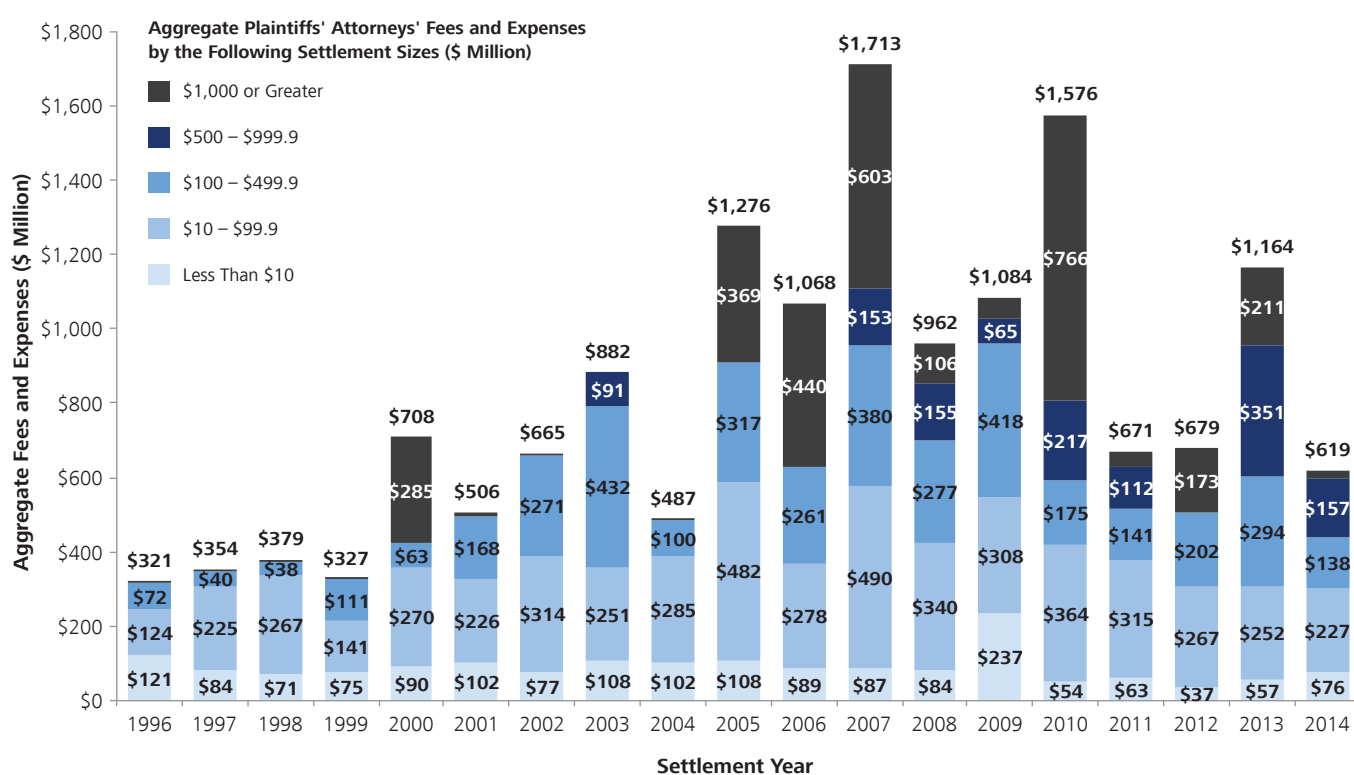
Aggregate Plaintiffs' Attorneys' Fees and Expenses

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

Aggregate plaintiffs' attorneys' fees and expenses were \$619 million in 2014, down almost in half since 2013 and mirroring the decrease in settlement amounts discussed above. See Figure 30.

Note that this Figure differs from the other Figures in this section, because it includes in the aggregate those fees and expenses that plaintiffs' attorneys receive for settlements in which no cash payment was made to the class. (This inclusion is a methodological change compared to last year's edition of this report).

Figure 30. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 1996 – December 2014



Trials

Very few securities class actions reach the trial stage and even fewer reach a verdict. Table 2 summarizes the outcome for all federal securities class actions that went to trial among the 4,435 that were filed since the PSLRA. Only 21 have gone to trial and only 15 have reached a verdict or a judgment.

This year, a trial was held in the case *In re Longtop Financial Technologies Securities Litigation*. A former executive of the Chinese software company was the only defendant left in the case. The jury reached a verdict for plaintiffs. As of press time, no post-trial motion or appeal has been filed.

Table 2. Post-PSLRA Securities Class Actions That Went to Trial
As of December 31, 2014

Case Name	Federal Circuit	File Year	Trial Start Year	Verdict	Appeal and Post-Trial Proceedings	
					Date of Last Decision	Outcome
Verdict or Judgment Reached						
In re Health Management, Inc. Securities Litigation	2	1996	1999	Verdict in favor of defendants	2000	Settled during appeal
Koppel, et al v. 4987 Corporation, et al	2	1996	2000	Verdict in favor of defendants	2002	Judgment of the District Court in favor of defendants was affirmed on appeal
In re JDS Uniphase Corporation Securities Litigation	9	2002	2007	Verdict in favor of defendants		
Joseph J Milkowski v. Thane Intl Inc, et al	9	2003	2005	Verdict in favor of defendants	2010	Judgment of the District Court in favor of defendants was affirmed on appeal
In re American Mutual Funds Fee Litigation	9	2004	2009	Judgment in favor of defendants	2011	Judgment of the District Court in favor of defendants was affirmed on appeal
Claghorn, et al v. EDSACO, Ltd., et al	9	1998	2002	Verdict in favor of plaintiffs	2002	Settled after verdict
In re Real Estate Associates Limited Partnership Litigation	9	1998	2002	Verdict in favor of plaintiffs	2003	Settled during appeal
In re Homestore.com, Inc. Securities Litigation	9	2001	2011	Verdict in favor of plaintiffs		
In re Apollo Group, Inc. Securities Litigation	9	2004	2007	Verdict in favor of plaintiffs	2012	Judgment of the District Court in favor of defendants was overturned and jury verdict reinstated on appeal; case settled thereafter
In re BankAtlantic Bancorp, Inc. Securities Litigation	11	2007	2010	Verdict in favor of plaintiffs	2012	Judgment of the District Court in favor of defendants was affirmed on appeal
In re Longtop Financial Technologies Securities Litigation	2	2011	2014	Verdict in favor of plaintiffs		
In re Clarent Corporation Securities Litigation	9	2001	2005	Mixed verdict		
In re Vivendi Universal, S.A. Securities Litigation	2	2002	2009	Mixed verdict		
Jaffe v. Household Intl Inc, et al	7	2002	2009	Mixed verdict		
In re Equisure, Inc. Sec, et al v., et al	8	1997	1998	Default judgment		
Settled with at Least Some Defendants before Verdict						
Goldberg, et al v. First Union National, et al	11	2000	2003	Settled before verdict		
In re AT&T Corporation Securities Litigation	3	2000	2004	Settled before verdict		
In re Safety Kleen, et al v. Bondholders Litigati, et al	4	2000	2005	Partially settled before verdict, default judgment		
White v. Heartland High-Yield, et al	7	2000	2005	Settled before verdict		
In re Globalstar Securities Litigation	2	2001	2005	Settled before verdict		
In re WorldCom, Inc. Securities Litigation	2	2002	2005	Settled before verdict		

Note: Data are from case dockets and news.

Notes

- ¹ This edition of NERA's research on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, the late Frederick C. Dunbar, Vinita M. Juneja, Sukaina Klein, Denise Neumann Martin, Jordan Milev, John Montgomery, Robert Patton, Stephanie Plancich, David I. Tabak and others. The authors also thank Lucy Allen and David Tabak for helpful comments on this edition. In addition, we thank current and past 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 are collected from multiple sources, including RiskMetrics Group's Securities Class Action Services (SCAS), complaints, case dockets, Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., SEC filings, and the public press.
- ³ *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014).
- ⁴ NERA tracks class actions filed in federal courts that involve securities. Most of these cases allege violations of federal securities laws; others allege violation of common law, including breach of fiduciary duty, as with some merger objection cases; still others are filed in US Federal court under foreign or state law. If multiple such actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, multiple actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect that consolidation. Therefore, our count for a particular year may change over time. Different assumptions for consolidating filings would likely lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends.
- ⁵ The October data are the most recent available from Meridian Securities Markets at press time.
- ⁶ *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014).
- ⁷ There was only 1 potential exception: a case in which it was not clear to us what presumption, if any, was invoked; this case was excluded from our analysis.
- ⁸ *Petition for a writ of certiorari, Omnicare v. Laborers District Council Construction Industry Pension Fund*, October 4, 2013.
- ⁹ Andrew Bolger, "Warning signs appear after bumper IPO year," *Financial Times*, 26 December 2014.
- ¹⁰ Number of IPOs on US exchanges, excluding ADRs, from Mergerstat through FactSet Research Systems, Inc.
- ¹¹ The percentages of federal cases in which financial institutions are named as defendants are computed on the basis of the first available complaint.
- ¹² Cases for which investor losses are not calculated are excluded from the statistics shown in this section. The largest excluded groups are IPO laddering cases and merger objection cases.
- ¹³ Moreover, it is possible that there are some cases that we have categorized as resolved that are, or will in the future, be subject to appeal.
- ¹⁴ These are cases in which the language of the docket or decision referred to the motion being granted in its entirety or simply "granted," but not cases in which the motion was explicitly granted without prejudice.
- ¹⁵ Unless otherwise noted, tentative settlements (those yet to receive court approval) and partial settlements (those covering some but not all non-dismissed defendants) are not included in our settlement statistics. We define "Settlement Year" as the year of the first court hearing related to the fairness of the entire settlement or the last partial settlement.
- ¹⁶ Here the word "dismissed" is used as shorthand for all cases resolved without settlement: it includes cases in which a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, and cases terminated by a successful motion for summary judgment or an unsuccessful motion for class certification. The majority of these cases are those in which a motion to dismiss was granted.
- ¹⁷ It is possible that not all our sources have updated the dismissal status yet. Thus, more cases may have been dismissed in 2014 than we include in our counts at press time.
- ¹⁸ See footnote 16 for the definition of "dismissed." The dismissal rates shown here do not include resolutions for IPO laddering cases, merger objection cases, or cases with trial verdicts. When a dismissal is reversed, we update our counts.
- ¹⁹ We used a simple CPI adjustment, to October 2014 (the latest data available at press time).
- ²⁰ IPO laddering cases are not relevant for Figure 27, because that Figure starts in 2010, while IPO laddering cases settled in 2009.

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