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Recent Trends in Shareholder Class Action Litigation: Filings Stay Low and Average Settlements Stay High—But Are These Trends Reversing?

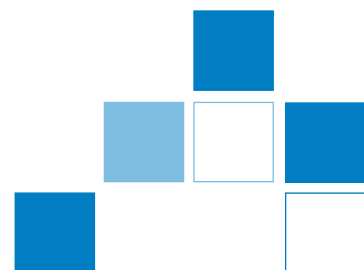
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Todd Foster, Ronald I. Miller, Ph.D., Stephanie Plancich, Ph.D., Brian Saxton, Svetlana Starykh¹

OVERVIEW:

TREND OF LOWER FILINGS AND BIG SETTLEMENTS CONTINUES IN 2007, WHILE MEDIAN INVESTOR LOSSES AND ACCOUNTING ALLEGATIONS DECLINE IN RECENT FILINGS

From 1998 through 2005, there were well over 200 federal class action filings each year—on average, there were 284 filings per year during this period. But in 2006, filings dropped sharply, with only 136 cases filed during the year. This pattern has continued: through June 30, 2007, only 76 cases have been filed. Annualizing the six months' worth of data, we project 152 filings for full-year 2007.

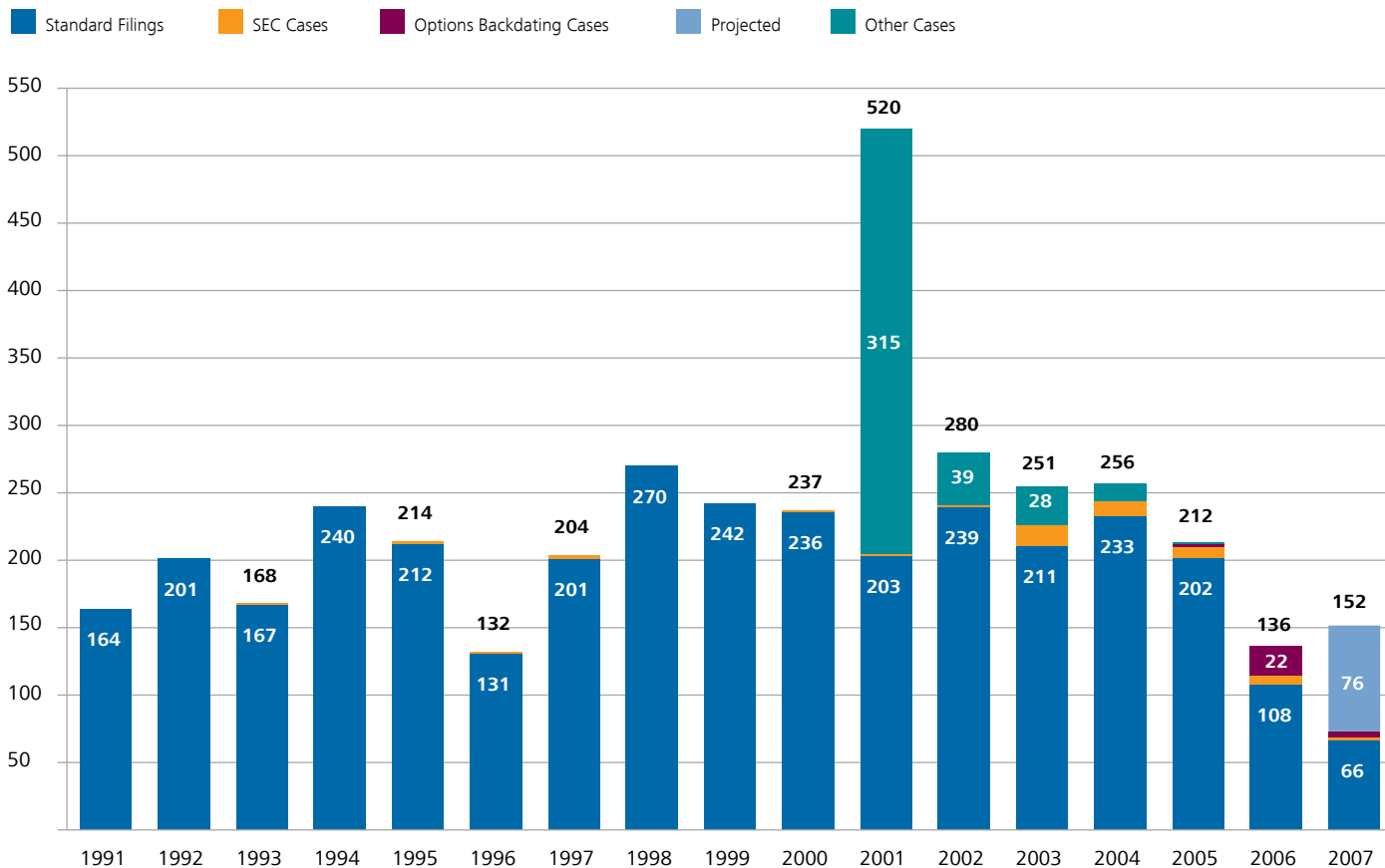
At the same time additional defendants finalized their settlements in the Enron and McKesson litigation, further increasing the total settlement amounts in these giant cases, and Tyco has announced a near \$3 billion tentative settlement. These giant settlements—along with other big settlements over \$100 million—have increased average settlement values in 2006 and 2007 to an all-time high. For the first time, all of the top ten shareholder class action settlements exceeded \$1 billion.

How might these trends develop in the future? The high average settlement values observed in 2006 and 2007 are the result of resolutions of cases filed primarily between 2002 and 2004. Will the 2006 and 2007 filings lead to similarly large settlements over the next few years, or will average settlement amounts, like filings to date, trend down? As a first look at this question, we have estimated the investor losses, a strong predictor of settlement values, for all the cases filed in 2005, 2006, and 2007. Median investor losses for cases filed in 2006 and 2007 are lower than the median values in 2005. We also see that the percentage of filings with accounting allegations—a factor historically associated with higher settlements—has declined in 2007 relative to the 2005-2006 period. These trends are early hints that recent filings might not lead to continued increasing average settlement values in the future, although it is still too early to know which of the recently filed cases will result in settlement as opposed to dismissal.

Federal Filings

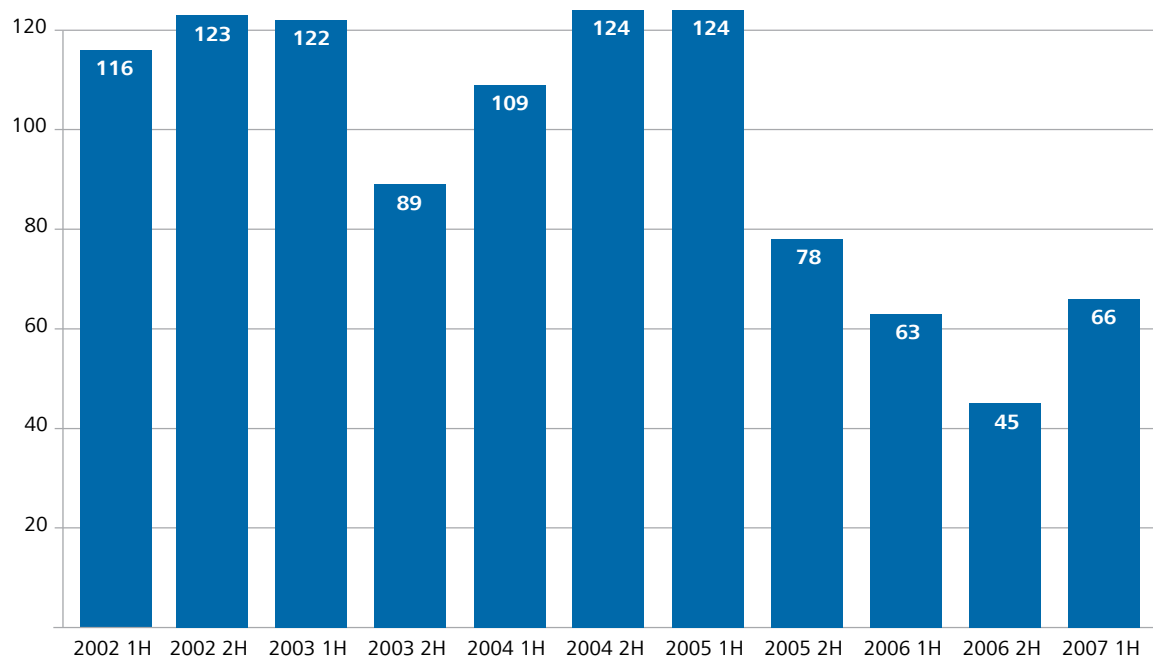
January 1, 1991 – June 30, 2007 and July 1, 2007 – December 31, 2007 Projected

Note: Other Cases include IPO laddering, mutual fund market timing, and analyst cases.



Standard Federal Filings

Six Month Intervals | January 1, 2002 – June 30, 2007



2007 FILINGS MAY BE ON THE RISE AGAIN

Over the past decade, the number of federal shareholder class action filings has varied from year to year. In some years, filings have spiked, typically driven by one-time litigation events such as the surge in claims related to IPO laddering cases in 2001. But on average, following the passage of the Private Securities Litigation Reform Act (PSLRA) in 1995, through 2005, there have been approximately 284 filings per year.² In 2006, however, filings dropped off, falling to only 136 filings for the year and this pattern has continued into 2007. Only 152 claims are projected for full-year 2007, if we annualize the six months' worth of filings.³

These totals include options backdating cases. Options backdating class action cases emerged in 2005 and peaked in 2006, when they made up 16% of filings. So far in 2007, these option cases have not kept up with the 2006 pace—only four cases were filed in the first half of the year—so it seems unlikely that they will pick up enough to reverse the downward trend in total filings. Note that a number of cases relating to

backdating allegations are filed as derivative suits, rather than class actions, so the trends described here are only part of the picture.

Standard federal filings appear to have started their sharp decline in the second half of 2005.

It has now been two full years with filings at these lower levels. This 2006-2007 drop-off is a statistically significant decline, with the average filings in 2006-2007 coming in at approximately 50% of the post-PSLRA average through 2005. However, filings in the first half of 2007 increased 47% from the second half of 2006, indicating that the trend in filings may be changing directions.

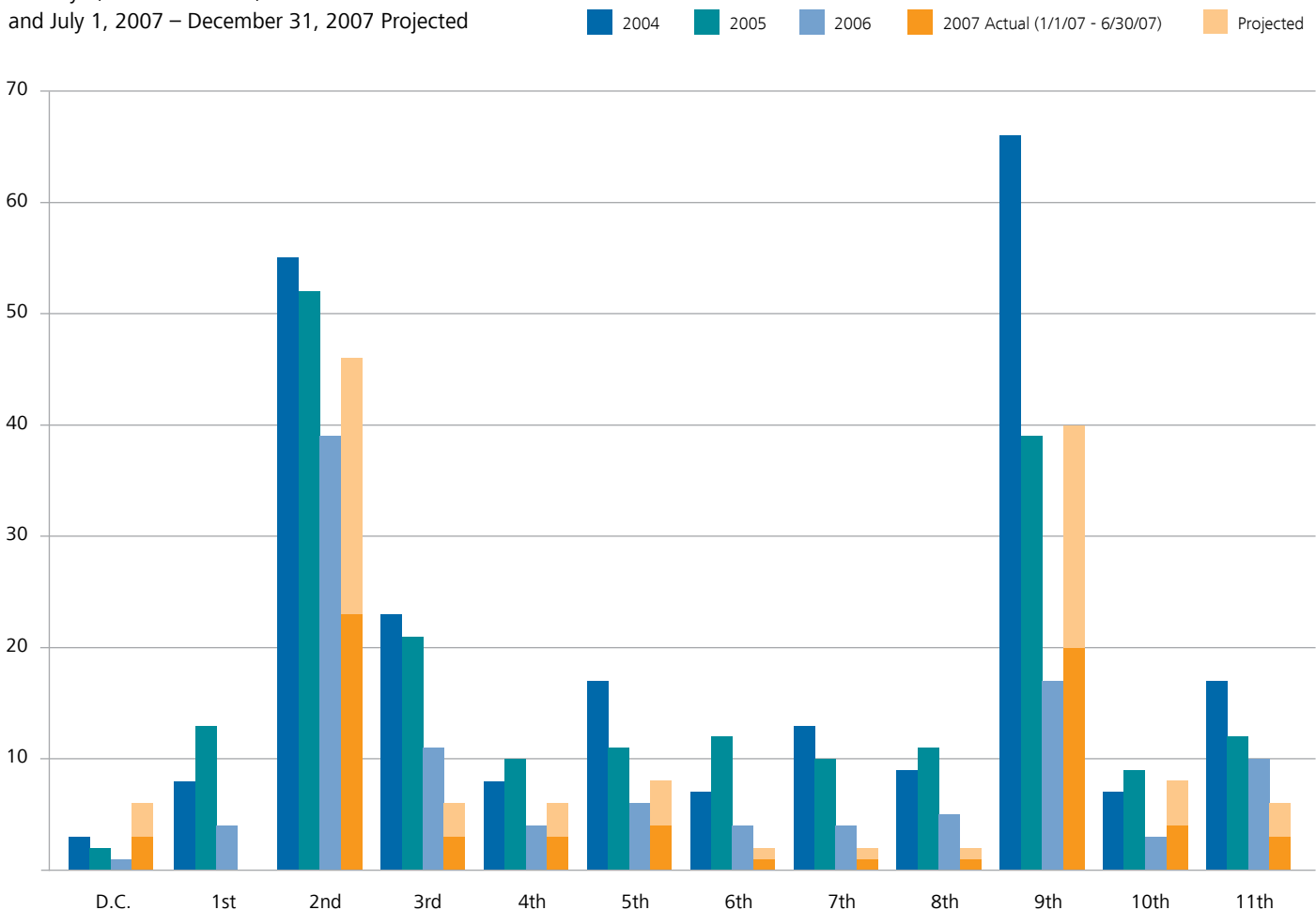
Filings by Circuit

This decline in filings has been observed in many Circuits: no change in the pattern of any one Circuit can explain the aggregate decline. The majority of shareholder class action cases are filed in the Second and Ninth Circuits. Filings fell in both these jurisdictions over the 2004-2006 period, although the Ninth Circuit had a much sharper decline than the Second.



Standard Federal Filings by Circuit

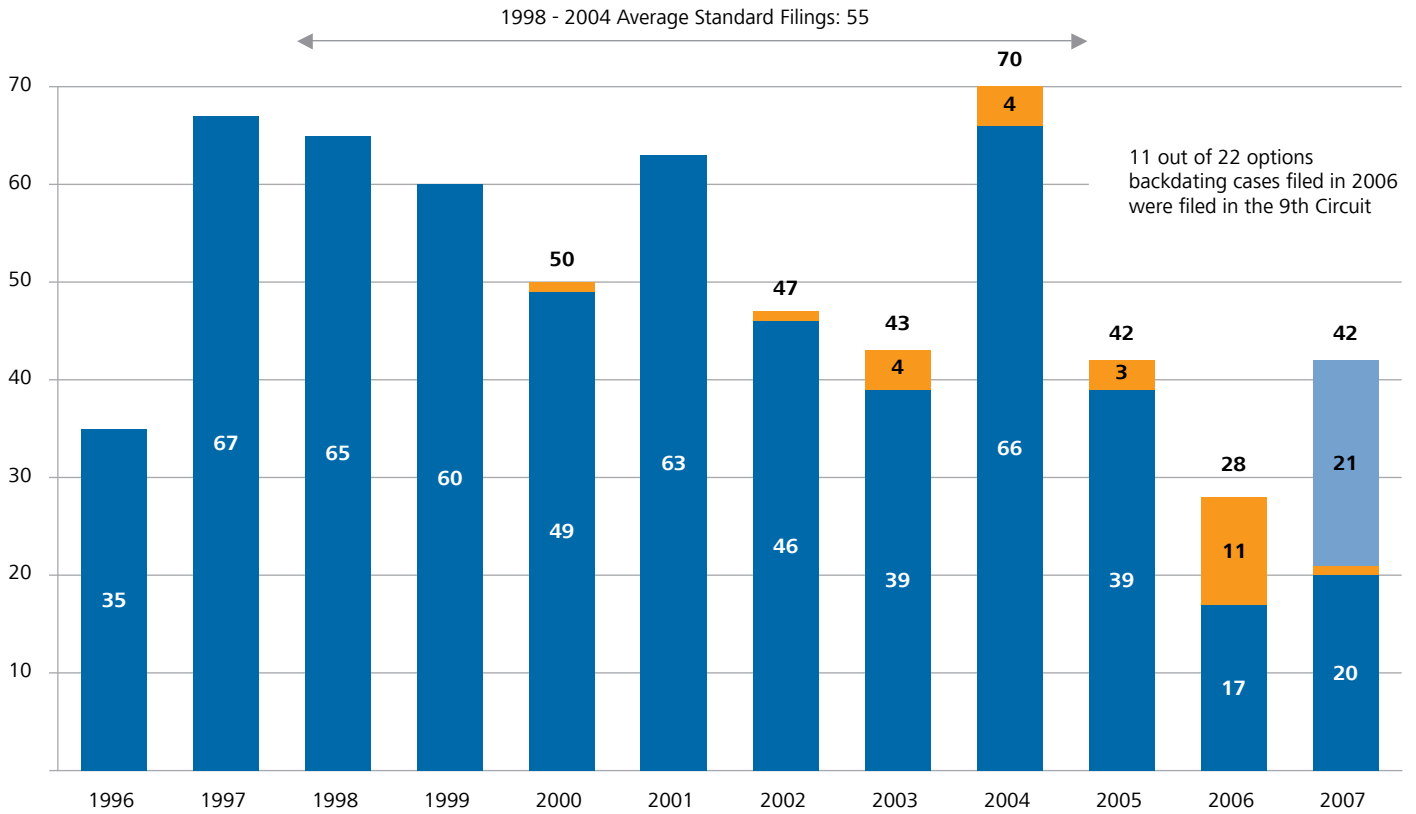
January 1, 2004 – June 30, 2007
and July 1, 2007 – December 31, 2007 Projected



Ninth Circuit Federal Filings

January 1, 1996 – June 30, 2007 and July 1, 2007 – December 31, 2007 Projected

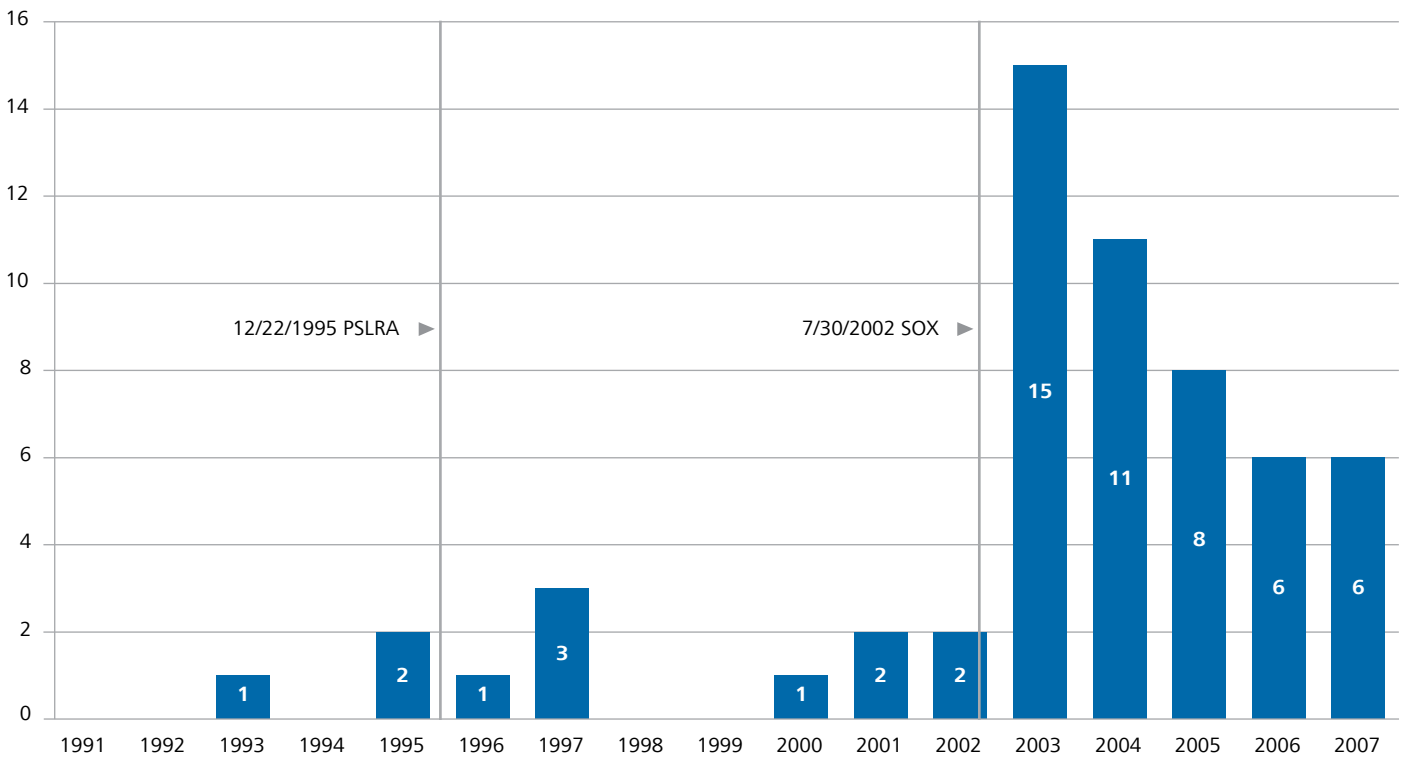
Standard Filings Other Cases Projected



Note: Other Cases include IPO laddering, analyst, mutual fund market timing, options backdating and SEC cases.

Cases Filed by the Securities and Exchange Commission in Federal Court

January 1, 1991 – June 30, 2007



In 2007, however, this Ninth Circuit pattern changed. In 2006, only 28 cases were filed in the Ninth Circuit. Eleven of these filings were options backdating cases, so this means only 17 standard cases were filed in the Ninth Circuit for all of 2006. In the first half of 2007, on the other hand, there have already been 20 standard filings. Thus, the Ninth Circuit is on pace to return to 2005 filing levels. The Ninth Circuit led the downward trend in filings from 2004 to 2005. Thus, to the extent this Circuit is ahead of the curve on filings trends, this may be a signal that other jurisdictions could also experience a rebound in filings in the months to come.

SEC Filings Increase After SOX

In addition to the class action law suits brought by private plaintiffs, NERA also tracks actions brought by the SEC against corporations.⁴ While there were few of these SEC filings in the 1990s, the number of cases filed by the SEC spiked in 2003.

In absolute number, these SEC cases are small relative to the number of private class actions, so the level of these filings themselves cannot explain the overall annual pattern of total filings. However, this surge in SEC enforcement actions followed the passage of the Sarbanes-Oxley Act (“SOX”) in July 2002, which was designed to improve corporate governance. It is possible that the combination of the stricter SOX requirements and increased SEC activity has been effective in reducing levels of corporate fraud. This, in turn, may have contributed to the lower levels of federal filings in 2006 and 2007, because if there is better corporate governance, there may be fewer cases available for plaintiffs to pursue. On the other hand, this story is hard to reconcile with the circuit-to-circuit variation in filing trends: it is unlikely SOX or increased SEC enforcements—national developments—would impact one jurisdiction more than others.

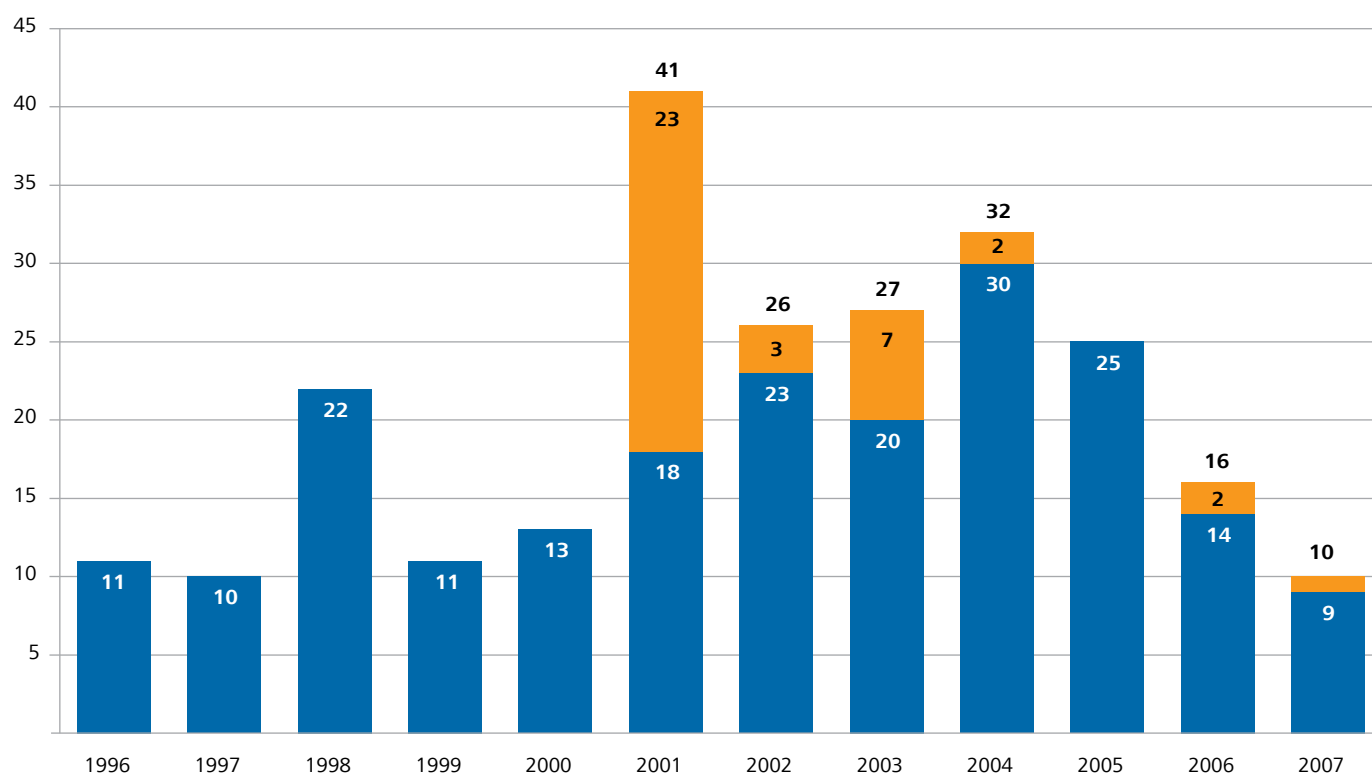
Filings Against Non-US Companies

NERA has also examined the pattern of shareholder class action filings against non-US companies in Federal Courts.⁵ Non-US companies have made up an increasing percentage of the listings in the US since the 1990s, leveling off at about 14% of listings since 2002.

Federal Filings Against Non-US Companies

January 1, 1996 – June 30, 2007

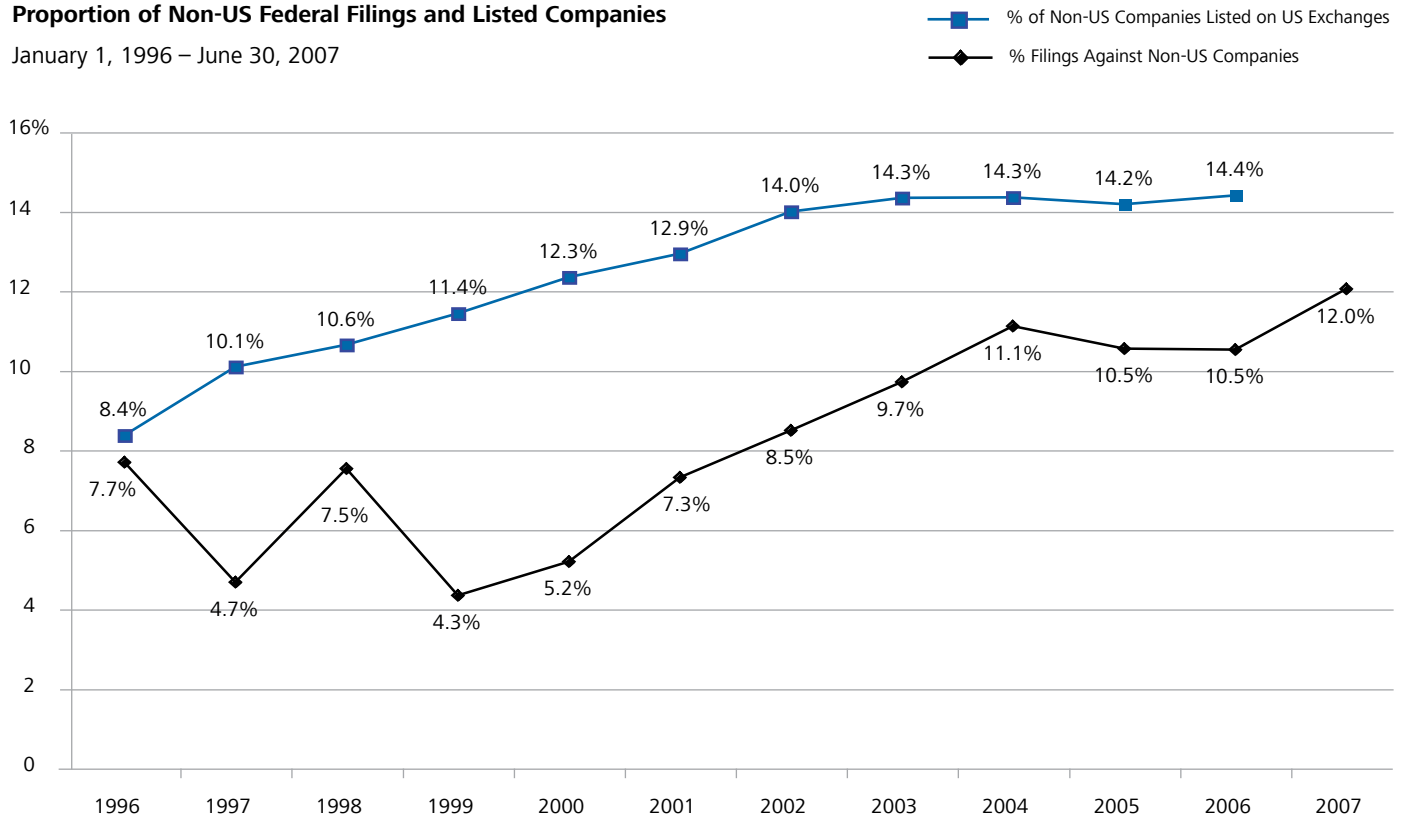
Standard Federal Filings Other Cases



Notes: Other Cases include IPO laddering, analyst, mutual fund market timing, options backdating, and SEC cases.

Proportion of Non-US Federal Filings and Listed Companies

January 1, 1996 – June 30, 2007



Notes: Source for companies listed on US exchanges is CD Disclosure. Data for 1991-2005 are as of December 31 of each year. Data for 2006 are as of June 30, 2006. Data for 2007 are not available.

Historically the percentage of class action filings in federal courts against foreign companies listed on US exchanges has been lower than the proportion of non-US company listings. However, in recent years this gap has been narrowing.

Companies Face a 1.3% Chance of a Suit Each Year

| | 1993 - 1995 | 2004 - 2006 | % Change | 2005 - 2007 | % Change |
|---|-------------|-------------|--------------|-------------|--------------|
| No. of Publicly Traded Companies | 11,688 | 12,339 | 5.6% | 12,617 | 7.9% |
| Annual Filings | 208 | 201 | -4.2 | 165 | -20.7 |
| Probability of Shareholder Class Action (SCA) | 1.8% | 1.6% | -9.3 | 1.3% | -26.5 |
| Probability of Dismissal | 19% | 38% | 97.0 | 39% | 101.2 |
| Probability of SCA that Survives Motion to Dismiss | 1.4% | 1.0% | -30.4 | 0.8% | -44.5 |

At the same time, filings against non-US companies have fallen since reaching a peak in 2001, though not as quickly as total federal filings.

Looking more closely at these two trends, we see that historically the percentage of all class action filings made against non-US companies has been lower than the proportion of non-US company listings. For example, in 2000 only 5% of filings were against non-US companies, while over 12% of listings belonged to non-US companies. In recent years, however, this has started to change, with the fraction of cases against non-US companies catching up to the fraction of listings that involve non-US issuers.

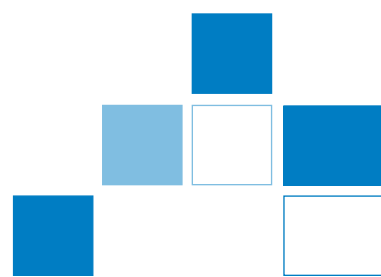
Probability of Facing a Suit Declines

The general drop in filings over the last two years had led to a decrease in the probability that a public corporation will be named in a shareholder class action. Based on the filing rate from 2005 to 2007, the average public corporation faces a 6.4% probability that it will face at least one shareholder class action lawsuit over a five-year period.⁶ The annual likelihood of a suit has fallen 27% since the 1993-1995 period, from 1.8% to 1.3%. Moreover, the decline in the likelihood of facing a suit has been augmented by an increased dismissal rate so that the probability of a company facing a suit that survives a motion to dismiss has fallen by 45%.

DISMISSAL RATES

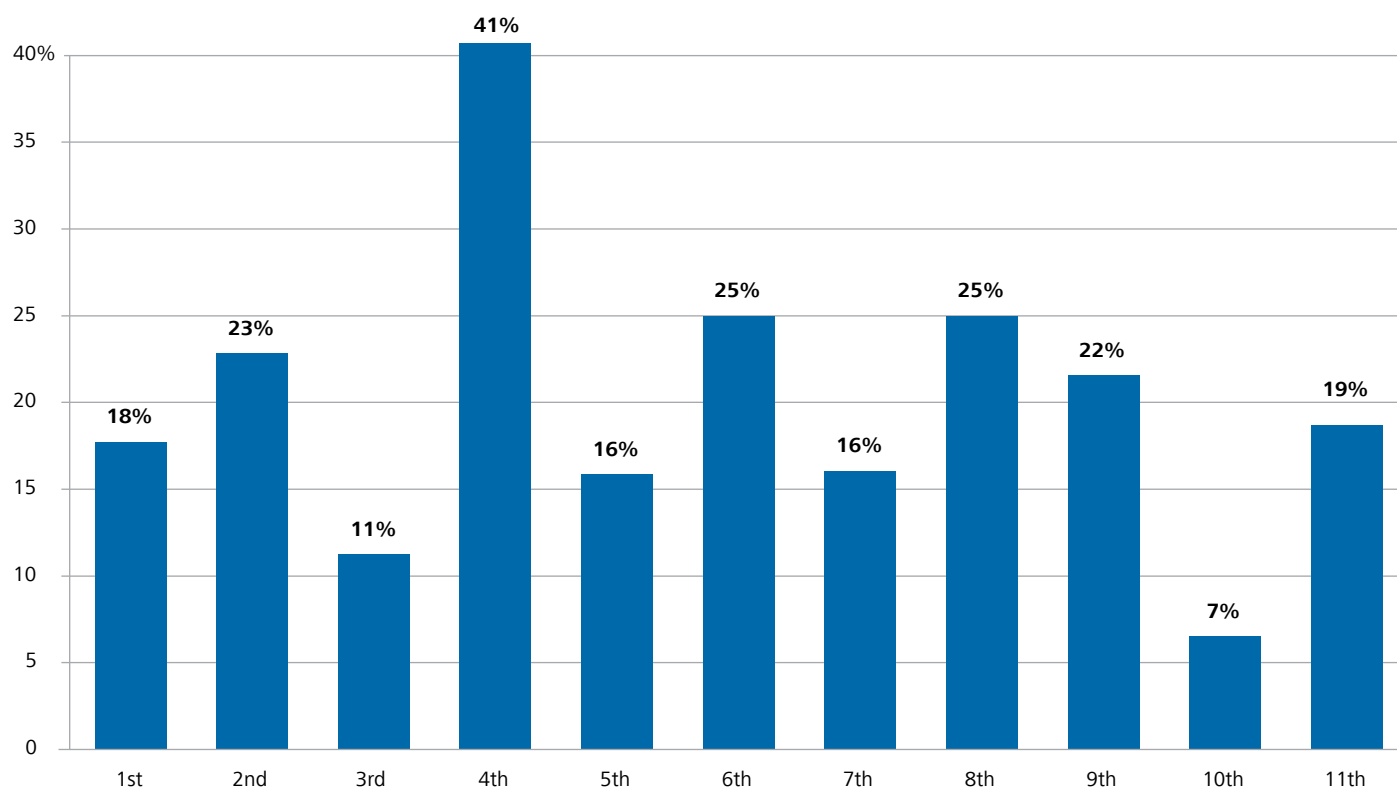
Since the passage of the PSLRA, dismissal rates have increased substantially.⁷ Dismissals accounted for only 19.4% of dispositions for cases filed between 1991 and 1995. For cases filed between 2001 and 2005, dismissals have accounted for 39.1% of dispositions.⁸ Our post-PSLRA dismissal rate may be slightly overstated, as it may include some dismissals without prejudice that will be reversed by amended and better-pled complaints or dismissals with prejudice that will be successfully appealed. The major drop in dismissal rates occurred following an initial adjustment to the tougher pleading provisions of PSLRA. In addition, rates have risen slightly in the past year—dismissal rates increased 2% from 38.2% in 2004-2006 to 39.1% in 2005-2007—perhaps as a result of the Supreme Court’s *Dura* decision.⁹

Dismissal rates vary by Circuit. The percentage of cases dismissed within two years of filings ranges from a low of 7% in the Tenth Circuit up to 41% in the Fourth Circuit. The Second and Ninth Circuits—with the most filings—have similar rates of about 22%. Note that these Circuit-specific patterns have been fairly steady over the past few years.¹⁰



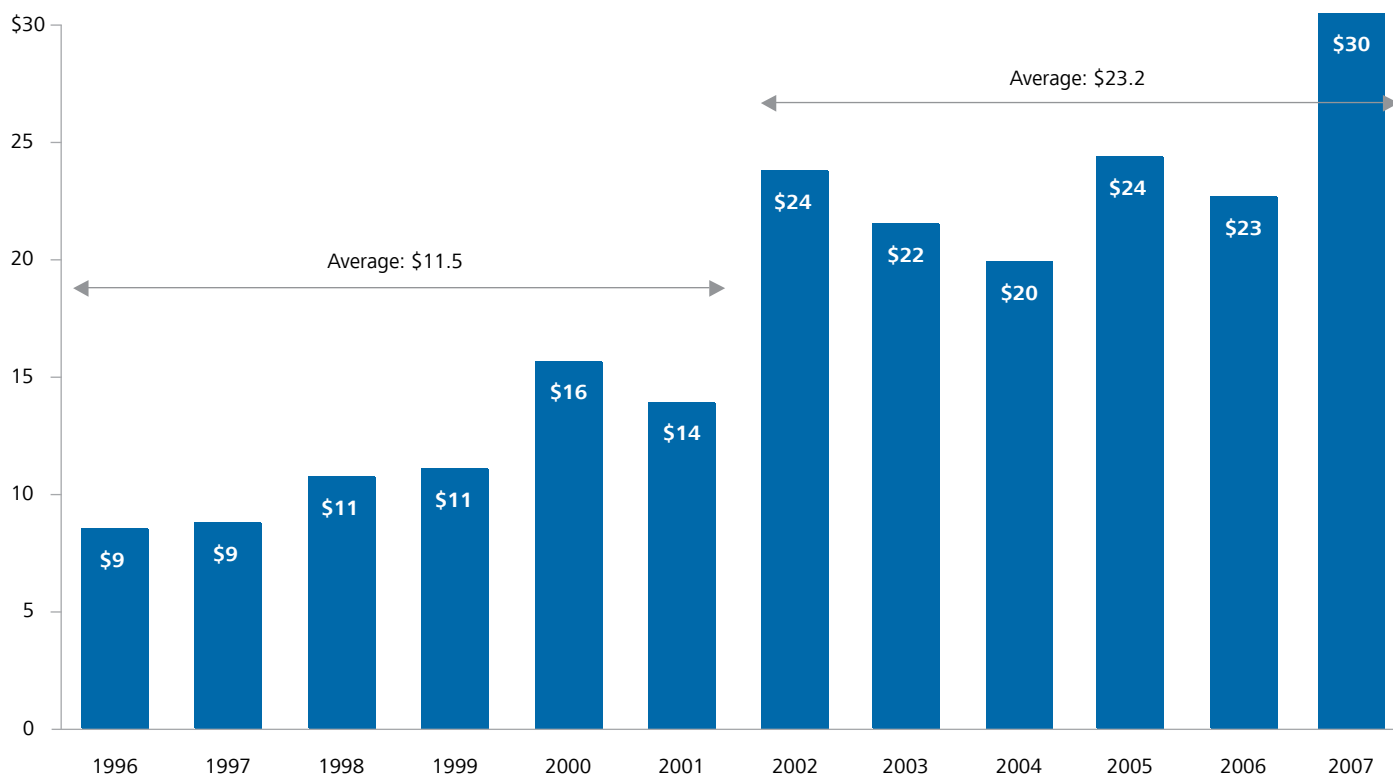
Dismissal Rates by Circuit Within Two Years of Filings (Federal Circuits)

Filing Date June 30, 2000 – June 30, 2005



Average Settlement Value (\$MM) Excluding Settlements over \$1 Billion

January 1, 1996 – June 30, 2007



Note: The average settlement values exclude the 2000 Cendant, 2005 WorldCom, and the 2006 Royal Ahold, AOL Time Warner, and two Nortel Networks final settlements.

Top Ten Shareholder Class Action Settlements (As of June 30, 2007)

| Ranking | Company | Year | Settlement Value (\$MM) |
|---------|------------------------------|------|-------------------------|
| 1 | Enron Corp. * | 2007 | \$7,231 |
| 2 | WorldCom, Inc. | 2005 | 6,156 |
| 3 | Cendant Corp. | 2000 | 3,561 |
| 4 | Tyco International, Ltd. † | 2007 | 2,975 |
| 5 | AOL Time Warner Inc. | 2006 | 2,650 |
| 6 | IPO Securities Litigation ** | 2006 | 1,425 |
| 7 | Nortel Networks (I) | 2006 | 1,143 |
| 8 | Royal Ahold, NV | 2006 | 1,100 |
| 9 | Nortel Networks (II) | 2006 | 1,074 |
| 10 | McKesson HBOC Inc. * | 2007 | 1,033 |

* Indicates a partial settlement including only some defendants.

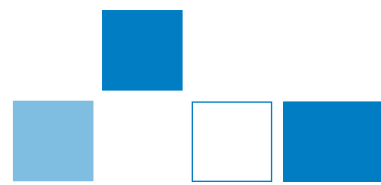
† Indicates a tentative settlement.

**MORE BIG SETTLEMENTS IN 2007
CONTINUE TO DRIVE UP AVERAGES**

Through 2004, the \$3.6 billion settlement paid in the Cendant litigation was by far the largest settlement in history, more than seven times larger than any other settlement.¹¹ In 2005, however, Cendant fell from its perch at the top of the list: WorldCom settled for more than \$6 billion.¹² Since then, eight of the top ten securities class action settlements of all time have all resolved in 2006 and 2007, with Enron remaining at the top of the list with a settlement of \$7.2 billion.¹³ Yet another record held by Cendant since 2000 was surpassed by Tyco

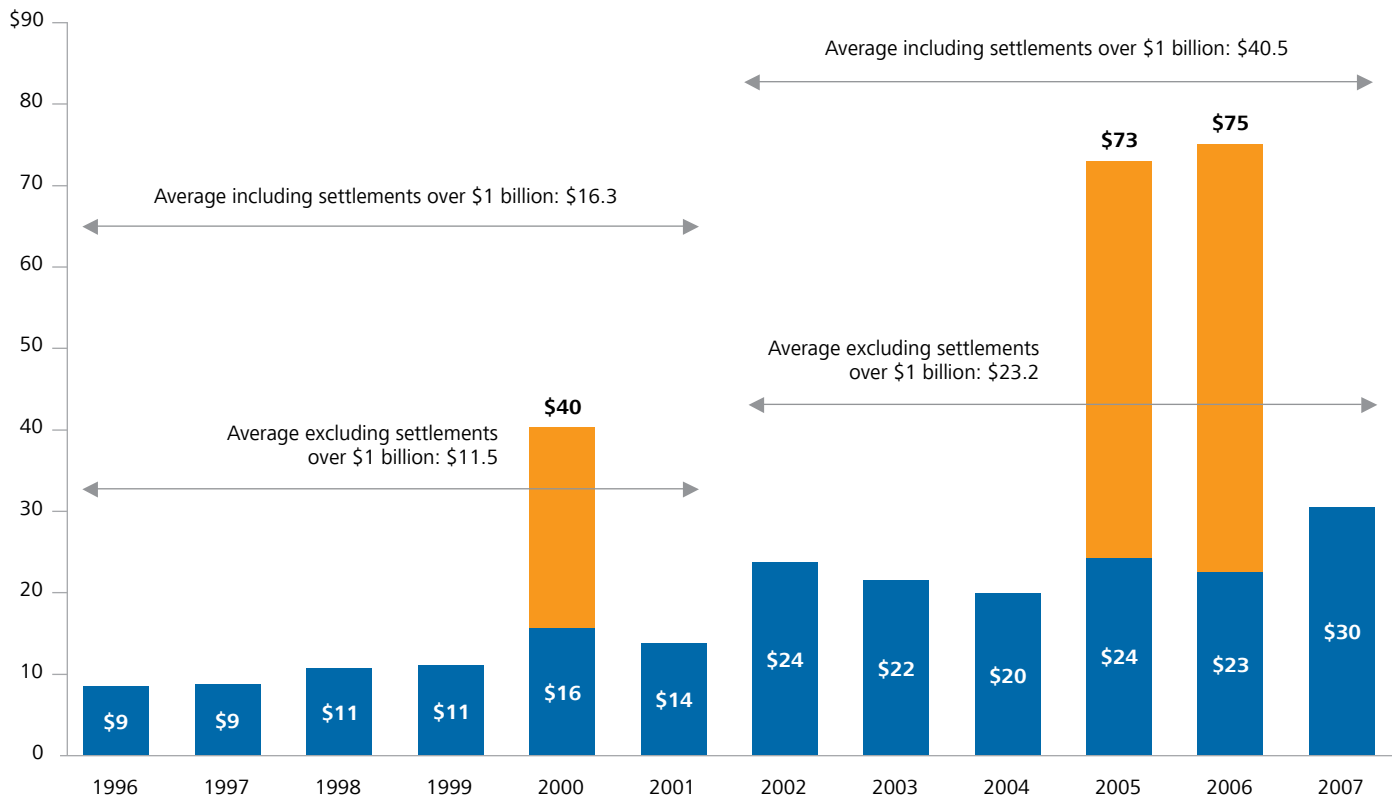
International in May 2007 when Tyco announced its tentative agreement to pay \$2.975 billion, the largest amount ever paid by a single settling defendant.

For the first time, all of the top ten shareholder class action settlements exceeded \$1 billion. All of these settlements were associated with enormous “investor losses.” In fact, we find that investor losses—an estimate of what investors lost over a class period relative to an investment in the S&P 500—is the single most powerful predictor of settlement size.¹⁴



Average Settlement Value (\$MM) Including Settlements over \$1 Billion

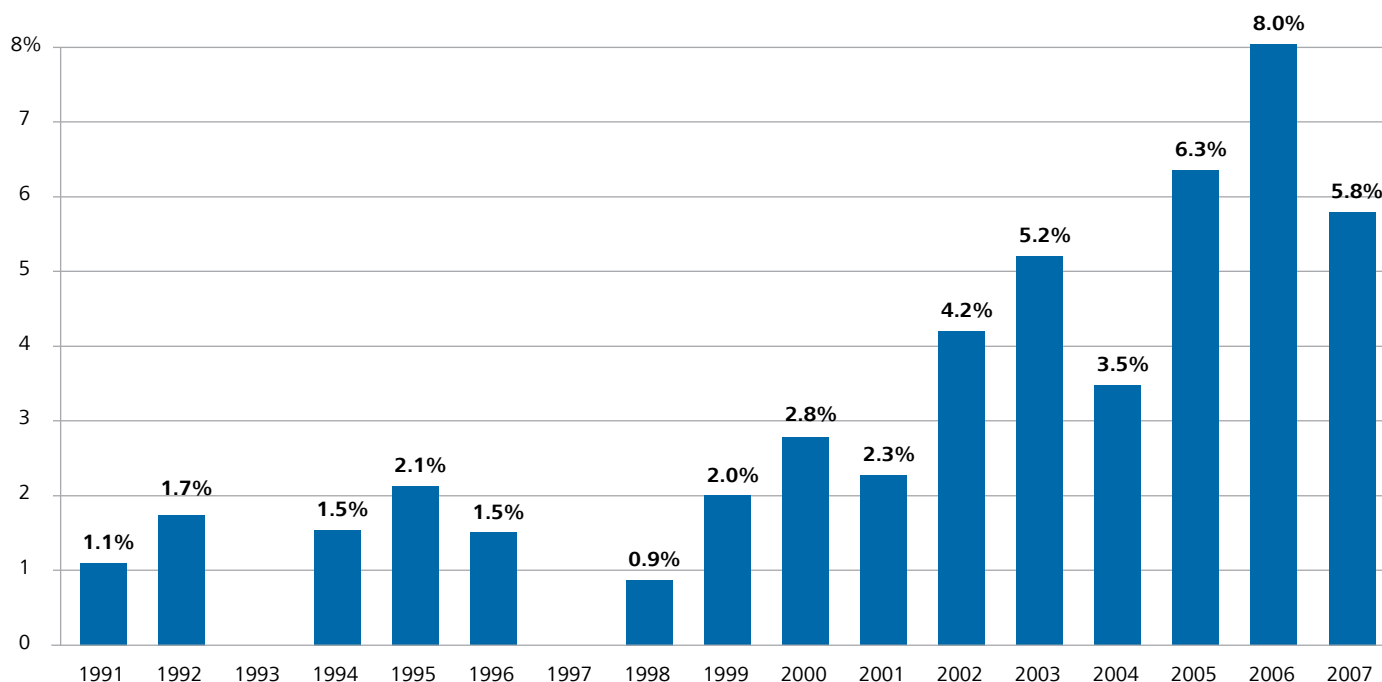
January 1, 1996 – June 30, 2007



Notes: Average settlement shown with and without settlements over \$1 billion. The 2000 Cendant, 2005 WorldCom, and the 2006 Royal Ahold, AOL Time Warner, and two Nortel Networks settlements exceed \$1 billion.

Proportion of Mega-Settlements By Year

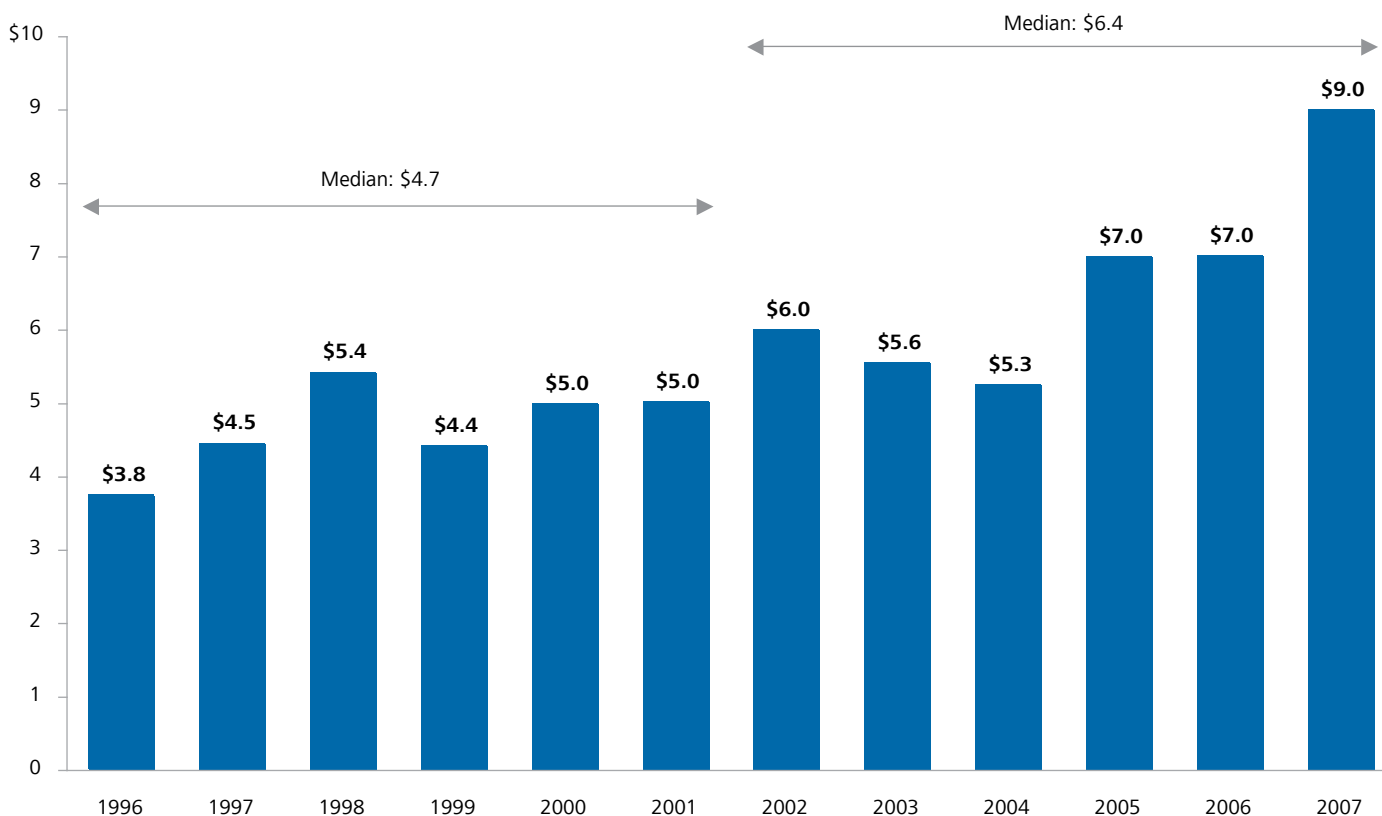
January 1, 1996 – June 30, 2007



Note: We define mega settlements to be those exceeding \$100 million.

Median Settlement Value (\$MM)

January 1, 1996 – June 30, 2007



Average Settlements Keep Rising

Since the passage of the PSLRA in 1995, average settlement values have been increasing. For example, excluding the top ten settlements over \$1 billion from the calculation, average settlement values doubled in the 2002-2007 period compared to the 1996-2001 period. In the early period, an average settlement was \$11.5 million, while in the latter period this amount grew to \$23.2 million.

Including the finalized settlements over \$1 billion into this picture increases the recent averages even more. Over the 2002-2007 period the average value is \$40.5 million.

And if the top settlements in 2006 and 2007 are finalized, cases including Tyco and Enron will drive up averages even higher, possibly to well over \$100 million for 2007.

Clearly, the giant settlements have a sizeable impact on average values. But while companies like Enron and WorldCom are settlement outliers, more other, less notorious companies are also paying big settlements. In recent years, the percentage of “mega-settlements”, defined as settlements over \$100 million, has increased.

In 1997, there were no settlements over \$100 million, but 8% of all settlements in 2006 were for \$100 million or more.

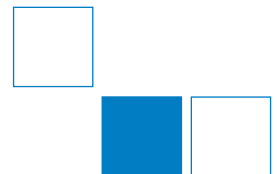
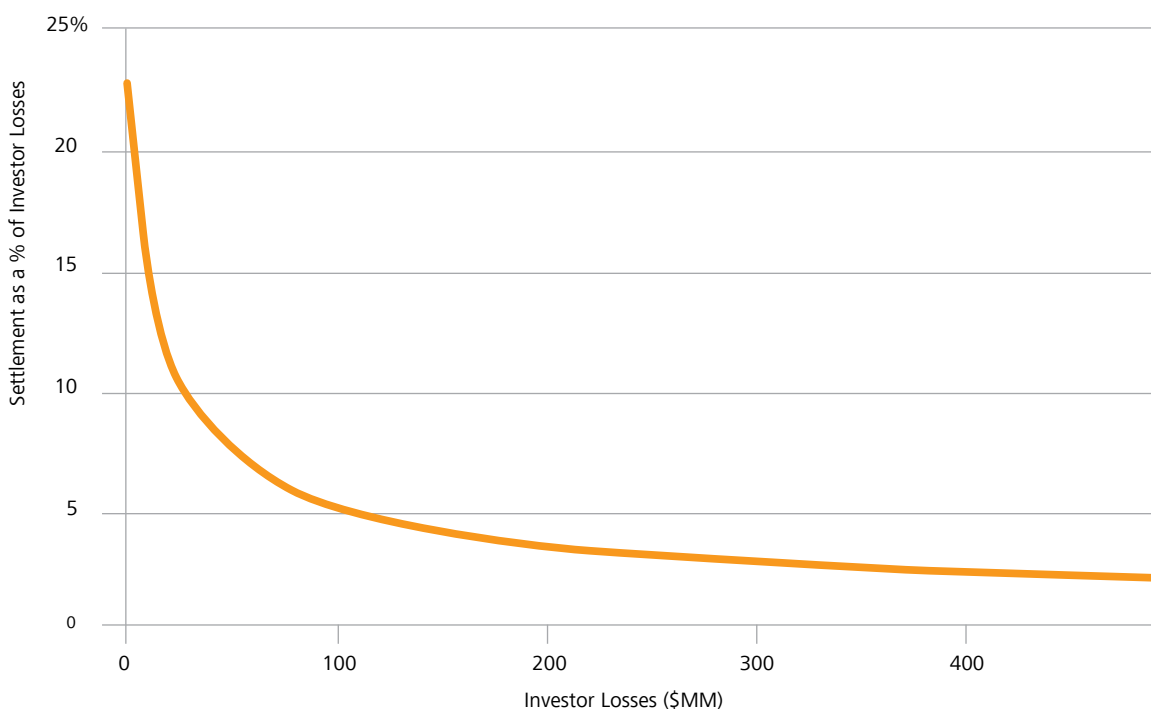
Median Settlements Also Hit New High in 2007

While big settlements dominate the news, most cases still resolve for far less than the average amount. The mega-settlements tend to drive up the averages, but the majority of cases resolve for under \$10 million. In fact, over the 2005-2007 period, 37% of cases have resolved for less than \$5 million, and 57% for less than \$10 million.

However, just as the trend in average settlements has been upward, there has also been an upward trend in median settlements. In 2006, the median settlement, or settlement at the 50th percentile, had reached \$7 million. In the first half of 2007, the median has increased to \$9 million, a new high. Compared to 2004, when 47% of cases resolved for less than \$5 million, only 32% of the 2007 settlements have been resolved for less than \$5 million.

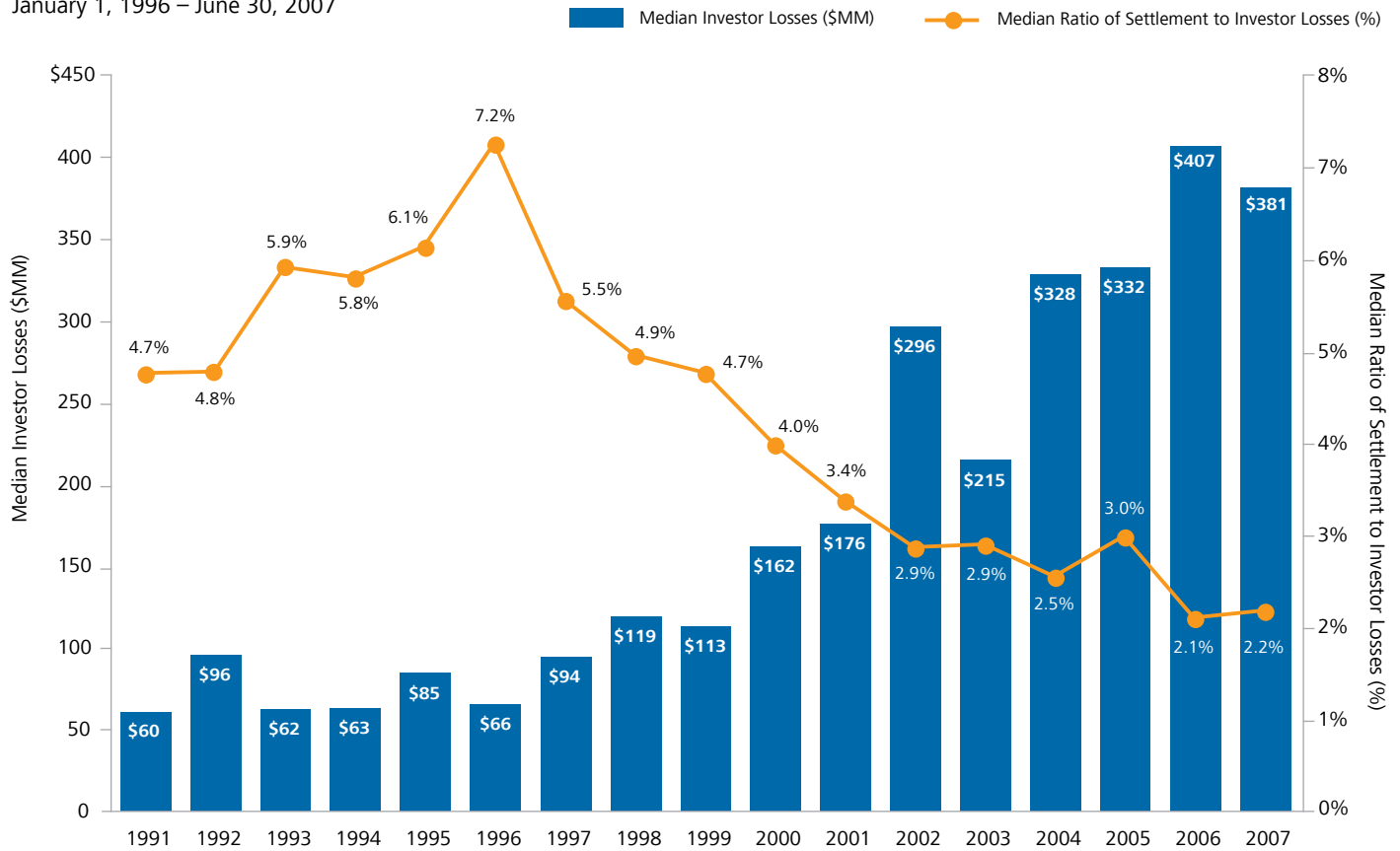
Despite these higher medians and averages, however, we find no statistically significant change in settlement values since the passage of Sarbanes-Oxley once we control for other factors, including investor losses. Higher investor losses for more recently resolved cases explain the rise in settlements.

Expected Settlements Rise More Slowly than Investor Losses



Investor Losses are Stabilizing

January 1, 1996 – June 30, 2007



Explaining Settlements

NERA has estimated a settlement prediction model that explains over 60% of the variation in settlements, using data on more than 700 settled cases filed after January 1, 1996.¹⁵ This section discusses the sensitivity of settlement values to various lawsuit characteristics; the sensitivity measures described are calculated controlling for other characteristics of the suit and remove the effect of overall price inflation.

Investor losses, which can be calculated using publicly-available data, constitute the single most powerful determinant of settlements, explaining approximately 50% of their variation. Settlements increase far less than one-to-one with investor losses. A 1.0% increase in investor losses results in a 0.4% increase in the size of the expected settlement.

Changes in investor losses over time are sufficient to explain both the headline settlements of recent years and the trend in median settlements. That is, while average settlements have been increasing, there is no statistical evidence that this is the result of a more difficult litigation environment for defendants. Average investor losses have grown dramatically over the last

decade, from \$134 million in the average suit settling in 1996 to approximately \$7 billion in 2006. To date, for cases settling in 2007, average losses are approximately \$2 billion.

Median investor losses have also been rising, hitting a peak of \$407 million for cases settling in 2006. In 2007, median losses remain high, at \$381 million. Compared to the 1996 median of \$66 million, this is quite a steep increase. However, median investor losses have not grown at nearly the pace of median settlement values, so the ratio of settlements to losses is much lower in 2007 than a decade ago.

Other factors are statistically significantly correlated with settlement values. Settlement values rise dramatically with the inclusion of each class of securities other than common stock (bonds or options, for example) in a settlement. This is not surprising. Our measure of investor losses is based only on potential losses associated with common stock. Losses suffered by investors in other securities are above and beyond those accounted for by our investor losses measure.

Settlements increase with the potential depth of the defendants' pockets. For each 1.0% increase in the company's market capitalization on the day after the end of the class period, the typical settlement will increase 0.2%. Additionally, if the defendant firm has declared bankruptcy or has a stock price of less than \$1.00 per share at the time of settlement, the settlement will typically be approximately 20% lower. The involvement of professional firms as co-defendants can lead to larger settlements. In cases with an accounting firm as a co-defendant, average settlements increase by more than two-thirds.¹⁶

But an accounting firm as a co-defendant is not the only way that accounting issues may increase settlements. The mere existence of allegations concerning accounting improprieties leads to an increase in the expected settlement of approximately 20%. If the defendant company has actually admitted that accounting irregularities were related to the allegations in the complaint, then the expected settlement increases by nearly 50%.

It is difficult to quantify the merits of the allegations in a particular case. The strength of the merits is, of course, normally a major point of contention between defense counsel and plaintiffs' counsel, underscoring the difficulty of objective measurement. As described above, admissions of accounting irregularities are taken into account in our model as one indicator of the merits of a case. We have also found that cases with any kind of official investigation, consent decree or penalty settles for, on average, approximately 20% more than cases without any official action. This includes any announced investigation by any official body (SEC, the New York Attorney General's Office, etc.) relevant to the allegations in the complaint. Although many

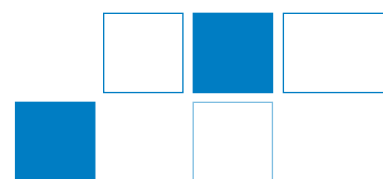
investigations result in no finding of fault, this broad measure of official action has greater predictive power for settlements, as compared to looking at cases where there was actually some finding of fault.

One of Congress's major goals for the PSLRA was to involve institutional investors as lead plaintiffs, with the intention that institutional investor plaintiffs play a more active role in litigation and generate better outcomes.¹⁷ Cases with an institutional investor acting as lead plaintiff settle for approximately one-third more on average than cases involving other lead plaintiffs. It is impossible to judge whether this correlation reflects the actions of the lead plaintiff or the nature of the cases in which institutions choose to be lead plaintiffs. It could be that institutional lead plaintiffs retain more effective counsel, supervise counsel more effectively or provide an independent contribution to the plaintiffs' strategy. Alternatively, it could be that institutional investors choose to become involved in cases where the allegations have greater merit or the defendants' capacity to pay is greater. This would only be true to the extent that the merit or capacity to pay is not fully captured by other variables in the statistical model.

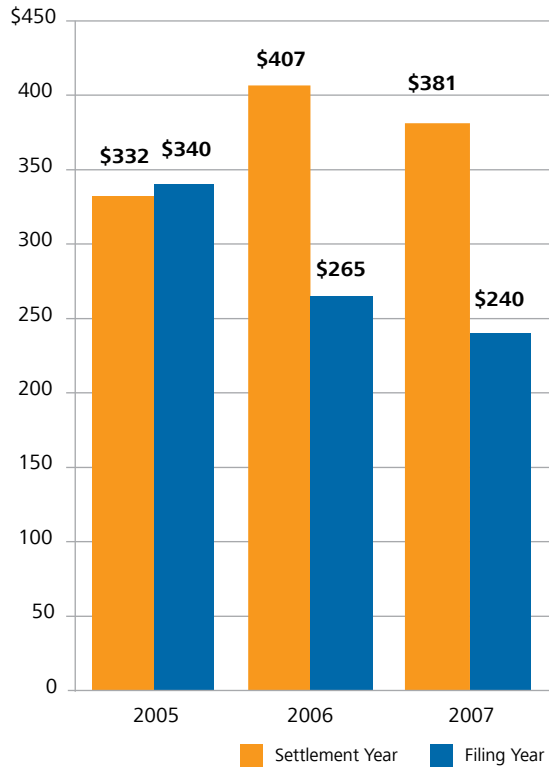
Settlements increase by an average of approximately one-third if an IPO is involved. Such cases involve potential Section 11 claims, which have a lower burden of proof for plaintiffs than potentially accompanying 10b-5 claims.

We have investigated whether defendants in different industries end up paying significantly different settlements. Only in the health services sector do defendants pay markedly different settlements, typically 20% higher than in other industries.

In the future there may be fewer settlement values that are increased due to accounting allegations.



Median Investor Losses (\$MM) by Filing Year and Settlement Year



WHERE ARE SETTLEMENTS HEADED? CHARACTERISTICS OF RECENT FILINGS

Since 2005, there have been two major trends: many mega-settlements and higher average settlement values, combined with lower filings. Where are these trends heading in the future? Will settlement values for the cases filed over the last two years remain high?

To get some insight on these questions, we examined characteristics of cases filed over the 2005-2007 period. First, we calculated investor losses for each case. Average investor losses from these filings have been well over \$1 billion in each year from 2005 to 2007, and average losses on cases filed over the entire 2005-2007 period are approximately \$1.8 billion. Thus, there are certainly some cases in the system with the potential to become future mega-settlements.

On the other hand, some of these 2005-2007 filings will be dismissed. It is possible that the characteristics—including investor losses—of cases that are dismissed will differ from cases that reach settlement, so losses for filed cases cannot be directly compared to losses for settled cases. In addition, the other characteristics of filed cases, including the merits, may also differ systematically from cases that have settled in recent years.

Thus, the benchmark table presented below showing median investor losses for cases filed in the past three years and the median losses for cases settled over the same period should be interpreted with some caution. With this caveat, however, it does appear that median losses from cases recently filed are lower than the medians for recent settlements. Also, median losses for filings in 2006 and 2007 are below the 2005 levels.

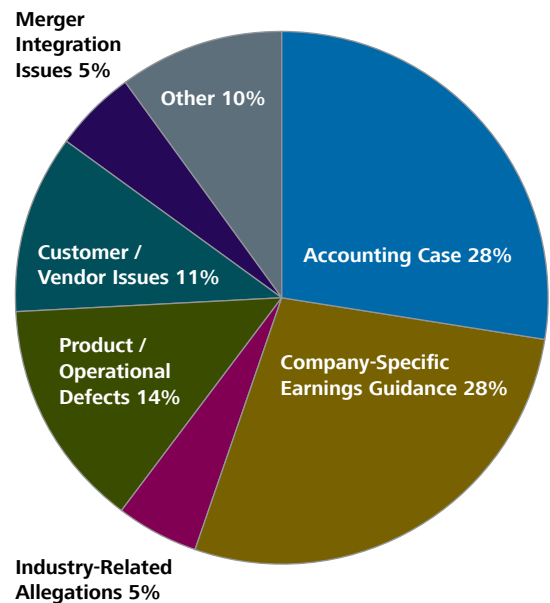
As a second way to learn more about recent filings, we also examined characteristics of the allegations made in cases filed between 2005 and 2007. The allegations have been classified into seven categories: accounting case, company-specific earnings guidance, industry-related, product or operational defect, customer or vendor issue, merger integration issue, and other allegations. It is possible for each case to have allegations that fall into multiple categories.

We find that 28% of all allegations in the complaints filed in 2005, 2006, and 2007 involve accounting issues. From our settlement prediction model, we know that, controlling for a number of other characteristics, cases with accounting allegations tend to have higher settlement values.

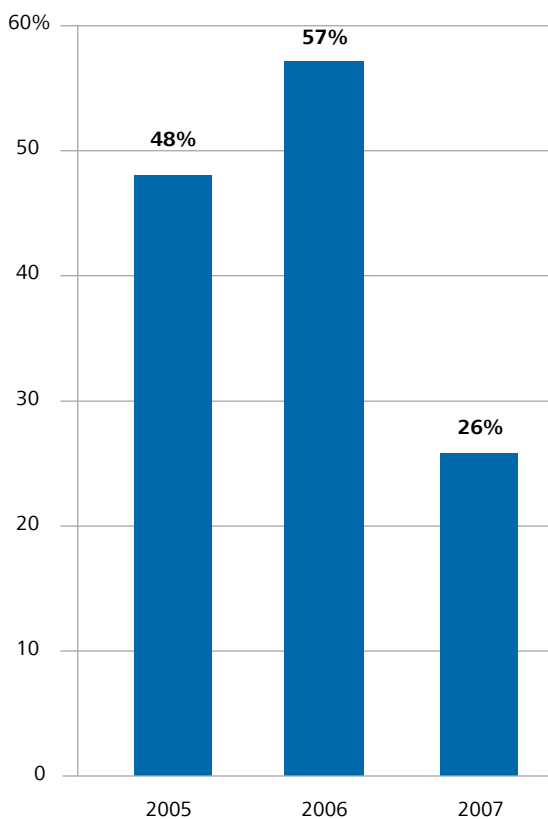
We also looked at the pattern of cases involving different types of allegations by year over this period. Through June 30, 2007, only 26% of the cases filed involve accounting allegations, down from 48% in 2005 and 57% in 2006. This drop could translate into fewer settlement values that are increased due to accounting allegations.

Allegations by Claim Type

January 1, 2005 – June 30, 2007



Standard Filings with Accounting Claims



In sum, compared to cases filed in 2005, it appears that cases filed in 2007 have relatively lower median investor losses, and a smaller percentage of cases have accounting allegations. Holding all else constant, these factors may lead to lower settlement values in the future. On the other hand, it is hard to know how the characteristics of the 2007 filings will shift over time as cases begin to resolve. For example, it may be that the cases with lower investor losses will be dismissed in the coming months: as of June 30, 2007, not one 2007 filing

had settled or dismissed. Thus, while the characteristics of recent filings suggest that the trend of increasing settlement values may not continue, it is still too early to tell for sure if the cases filed in recent years will turn out to be different from the cases that settled for such high values in 2005-2007.

CONCLUSION

By the end of 2005, two distinct trends in shareholder class actions had emerged. Huge settlements over \$1 billion—including 2005's WorldCom—began to dominate the news, driving up settlement averages. At the same time, in the second half of 2005 filings began to drop off. Both of these trends have persisted through the first half of 2007.

Will these trends continue into the future? The huge settlements of recent years have been driven by very large investor losses, and an examination of the investor losses from 2006-2007 filings shows that median losses are not quite as high as those associated with the recent higher settlements. Also, Sarbanes-Oxley and increased SEC enforcement actions may have led to improved corporate governance in recent years. Finally, the percentage of cases with accounting allegations has fallen in 2007 relative to the 2005-2006 period.

On the other hand, the stock market has performed relatively well over the past few years. Should the market have a substantial downturn, average investor losses are likely to increase and filings levels could begin to rise. Recent turmoil in the subprime lending market has led to seven claims this year through June 30th, and may be the source of a significant number of filings in the near future. Certainly, the collapse of the 1990s stock market bubble led to an active period of class action litigation filings and settlements—a similar drop in market values in the future might lead to a resurgence in filings, even in a post-SOX world.

Should the market have a substantial downturn, average investor losses are likely to increase and filing levels could begin to rise.





End Notes

- 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, Vinita M. Juneja, Denise Neumann Martin and David I. Tabak. We gratefully acknowledge their contribution to previous editions as well as this current version. In addition, the authors thank Yasir Mehboob, Adam Mehes, Sheena Siu, Carlos Soto, Steven D. Towler, and Yelena Yakunina for further assistance. These individuals receive credit only for improving this paper; all errors and omissions are ours.*
- 2 *The post-PSLRA average is calculated for the period from 1998 to 2005, and therefore excludes 1996 and 1997. A large drop in federal filings occurred in those years as plaintiffs may have filed in state courts to avoid the restrictions of PSLRA.*
- 3 *From 1998 through 2005, on average, there were 230 standard filings per year. Standard filings are defined to exclude analyst, laddering, mutual fund market timing, options backdating and SEC cases, which are considered one-time litigation events. In 2006, standard filings dropped to 108 and through the first six months of 2007, only 66 standard cases have been filed. If we annualize the six months' worth of data, we project 132 standard filings for full-year 2007.*
- 4 *Limited to SEC actions reported by Institutional Shareholder Services Inc. website.*
- 5 *Non-US companies are defined as those that are not domiciled in the United States.*
- 6 *The probability of not facing a suit is 98.7% per year. Assuming that the probability of facing a suit in each year is independent and compounding over five years yields a 93.6% chance of no suit, or a 6.4% chance of at least one suit, in five years. The 2005-2007 average filing rate is based on the number of filings projected for all of 2007.*
- 7 *Our dismissal statistics include summary judgments but exclude partial dismissals.*
- 8 *Because it is not uncommon for judges to take up to two years from the filing date to rule on motions to dismiss, it would be premature to evaluate dismissal rates of cases filed in 2006-2007.*
- 9 *See Dura Pharmaceuticals, Inc., et al. v. Broudo et al., 544 U.S. 336 (2005), in which the Supreme Court ruled that plaintiffs must show a link between alleged illegal activity and a drop in stock prices to survive a motion to dismiss. Justice Stephen G. Breyer wrote for the Court, "It should not prove burdensome for a plaintiff who has suffered an economic loss to provide a defendant with some indication of the loss and the causal connection that the plaintiff has in mind."*
- 10 *Note that these rates are lower than the 39.1% rate cited above as the overall dismissal rate because they only include dismissals within two years of filings. This different calculation is performed for technical statistical reasons relating to the smaller number of observations for individual circuits.*
- 11 *The Cendant settlement includes the \$374 million Cendant PRIDES settlements.*
- 12 *Unless otherwise indicated, settlement year is considered to be the year when the settlement with all defendants is finalized and approved by the Court.*
- 13 *The \$7.2 billion Enron settlement includes seven partial settlements through June 30, 2007.*
- 14 *We use investor losses as a proxy for the damages estimates presented by plaintiffs' side prior to settlement because we generally do not have access to the actual claims made by plaintiffs in each case.*
- 15 *Technically, the model explains over 60% of the variation of the logarithm of settlement values. The current version of the predicted settlement model contains cases settled through June 30, 2007.*
- 16 *Settlement values throughout this section are taken to be the total final settlement paid by all defendants.*
- 17 *See In re Enron Corp. Securities Litigation, 206 F.R.D. 427, 442 (S.D. Tex. 2002).*

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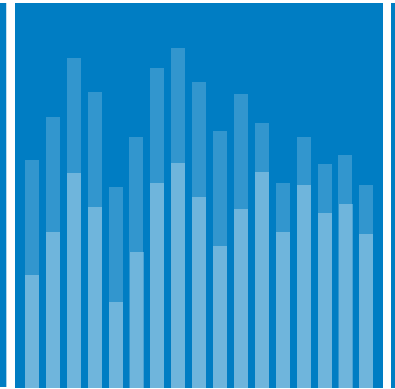
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