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Securities Class Action Case Filings

2007 Mid-Year Assessment

Research Sample

- The Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research identified securities class action filings as of 6/25/07.
- The sample includes 2,537 federal class action cases filed since the beginning of 1996 through 6/22/07.
- The class action filings include 313 "IPO Allocation" filings, 66 "Analyst" filings and 48 "Mutual Fund" filings.

Overview

The first half of 2007 marked the fourth consecutive six-month period with below average securities class action filing activity ("filings"). In total, there were 59 filings in the first half of 2007, slightly above the 53 filings in the second half of 2006. This level of activity is 42 percent below the average semi-annual filing rate of 101 observed over the nine-year period ending June 2005. Beginning with the second half of 2005, the average semi-annual filing rate dropped to 61 filings, 40 percent below the average observed over the preceding nine-year period. On an annualized basis, the 2007 data suggest that approximately 124 companies will be sued this year.[1]

Total market capitalization losses associated with filings in the first half of 2007 showed a slight up-tick from 2006, reflecting an increase in the number of filings and an increase in the size of the loss associated with the average filing. The annualized Maximum Dollar Losses ("MDL") in the first half of 2007 amounted to $334 billion, a 13 percent increase from 2006 and the annualized Disclosure Dollar Losses ("DDL") in the first half of 2007 amounted to $69 billion, a 30 percent increase from 2006.[2] However, current total market capitalization losses continue at levels well below those observed in 2000-2002.

Exhibit 1

Complaint Filings Box Score: 6-Month Periods

	Average (1996 H2 – 2005 H1)	2005 H2	2006 H1	2006 H2	2007 H1
Class Action Filings	101	69	63	53	59
Disclosure Dollar Loss ($ Billions)	$67	$35	$22	$31	$33
Maximum Dollar Loss ($ Billions)	$371	$116	$126	$169	$158

Following two full years of lower securities class action filing activity, it is natural to ask why filings are down and whether we have seen a permanent "shift" in the securities class action landscape. While it is not possible to provide a definitive answer to these questions, many explanations have surfaced regarding why this change may have occurred. Two prominent hypotheses attribute the lower level of filings to either "less fraud" or a "strong stock market" combined with low volatility.

[1] We annualize figures for the period from 1/1/07 to 6/22/07, when appropriate for comparison purposes.

[2] Maximum Dollar Loss and Disclosure Dollar Loss are defined in the "Market Capitalization Declines" section.

Overview
continued

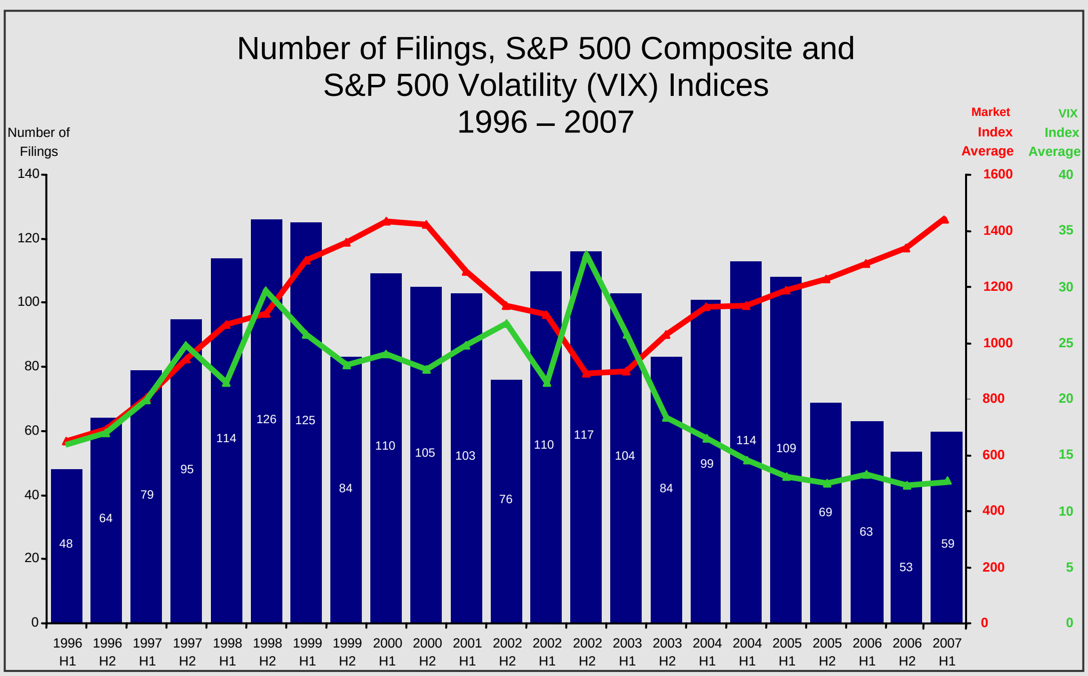
Hypothesis 1: There is Simply Less Fraud

Professor Joseph Grundfest of the Stanford Law School states that the decline in class action securities litigation may be the result of less fraud. “With increased enforcement activity by the SEC and Department of Justice, we have seen an increase in both the probability of detection and associated penalties. Economic theory suggests these factors should lead to a decline in the incidence of fraud—exactly what we have seen occur since the middle of 2005. Consistent with the ‘less-fraud’ hypothesis, plaintiff counsel have been unable to identify any publicly traded firm that should, in the last two years, have been sued for fraud, but has not been sued. In my opinion, the size of class action securities fraud litigation activity may have experienced a permanent shift. This suggests that the indictment of a leading plaintiff law firm is not the cause of the decrease in the incidence of filings. For example, I would not attribute the decrease in filings to the ‘broad Milberg’ hypothesis that suggests the prevalence of alleged questionable, unethical, or illegal kickback and fee splitting activity is so pervasive in the class action bar that the Milberg indictment chilled other plaintiffs and law firms from instituting class actions. In my opinion, increased enforcement activity and a heightened awareness among corporate insiders may have led to a permanent shift in the incidence of securities fraud litigation.”

Hypothesis 2: Strong Stock Market

The decreased level of class action filings over the last two years has coincided with a strong stock market with low volatility. Taking a combined look at filings activity, the level of the S&P 500 and S&P 500 volatility shows a link between filings levels and the stock market. While the S&P 500 was similarly strong in 1998 and 1999, the volatility at that time was high in comparison to the most recent two years. John Gould of Cornerstone Research notes that he “would not be surprised to see filings move back to the 200 per year level if the stock market were to weaken.”

Exhibit 2



Overview
continued

The “less fraud” and “strong stock market” hypotheses for the lower level of filings over the last two years are not mutually exclusive—the recent decline in filing activity could be the result of a combination of both factors—but the two hypotheses do lead to differing expectations for the level of filings in the future. The “less-fraud” hypothesis suggests a significant and permanent shift in the class action landscape. The “strong stock market” with low volatility explanation suggests a temporary shift in the landscape—one that will continually change with the strength and volatility of the stock markets.

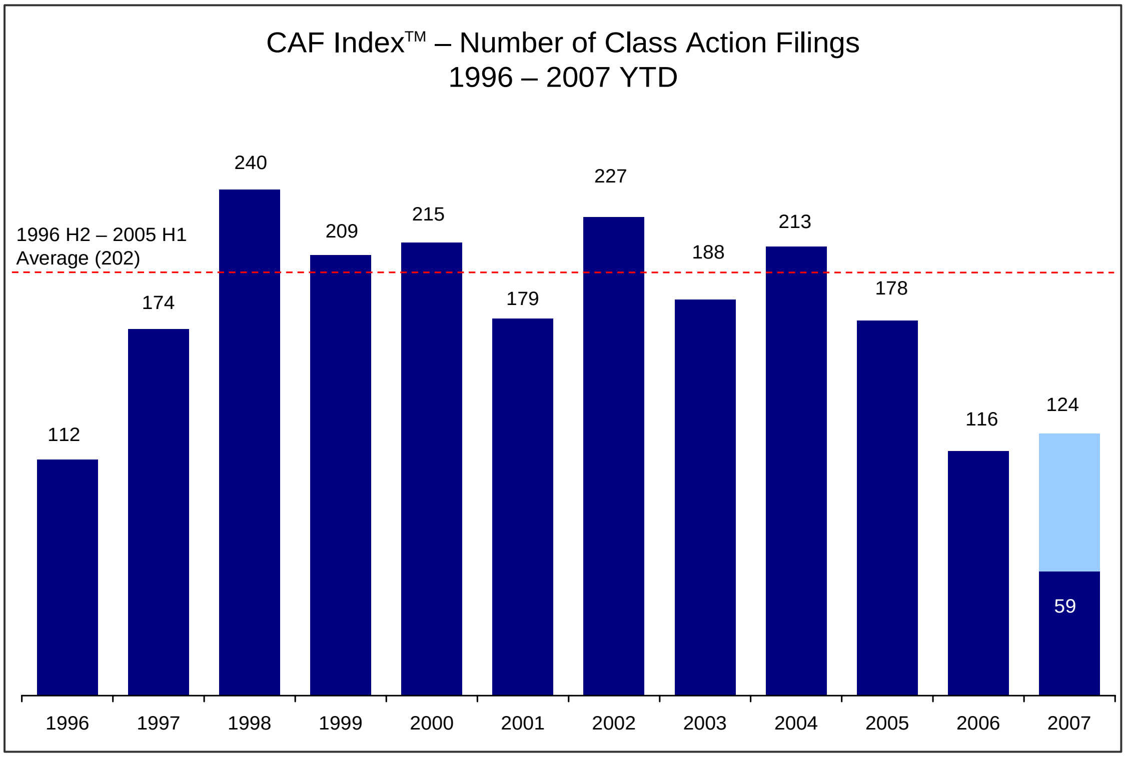
Although these explanations lead to differing expectations for future levels of class action filings, there is no doubt that we have experienced at least a temporary shift over the last two years. Not only has this shift had an impact on the level of filings, but it will also influence the level of settlements and total settlement dollars in the coming years.

These findings are described in greater detail in this report.

Number of Filings

The CAF Index™ tracks the number of class action filings throughout the calendar year.[3] There were 59 filings in the first half of 2007. As discussed in the introduction, beginning in the second half of 2005, and lasting for two years now, the incidence of filings has decreased by approximately 40 percent compared to the preceeding 9-year period. On an annualized basis, the number of traditional filings in 2007 is about the same as 2006, with 116 filings in 2006 compared to 124 filings in the first half of 2007 (see Exhibit 3). However, this is well below the 202 per year average from the second half of 1996 through the first half of 2005. The CAF Index™ demonstrates the fluctuations in litigation activity over time, with the lowest activity in 1996, possibly in response to the late 1995 adoption of the Private Securities Litigation Reform Act ("PSLRA"). The 59 filings in the first half of 2007 is the third lowest six month level since 1996, after the six-month periods in the first half of 1996 and second half of 2006 (see Exhibit 4). In addition, the 112 filings over the twelve months ending June 2007 is the lowest since 1996. Finally, our analysis reveals that there is a statistically significant difference between the lower number of filings in the first half of 2007 and the average number of filings from the second half of 1996 through the first half of 2005.[4] The statistical analysis also shows a statistically significant difference when the average level of filings over the last two years is compared to the average level for the nine-year period ending June 2005.

Exhibit 3

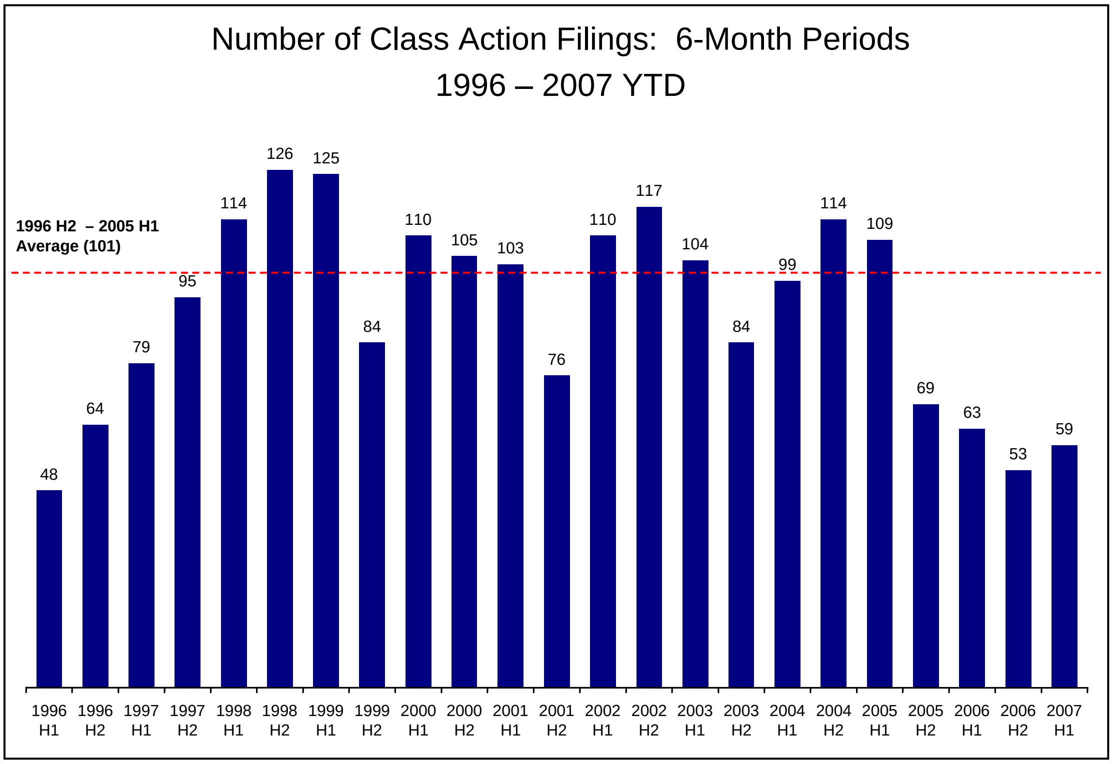


[3] Our indices and exhibits exclude IPO Allocation, Analyst and Mutual Fund filings as described in detail in our earlier publication, *Securities Class Action Filings. 2006: A Year in Review*.

[4] A t-test was used to check whether there is a statistically significant change in the number of filings per half year between the first half of 2007 and during 1996 H2 – 2005 H1.

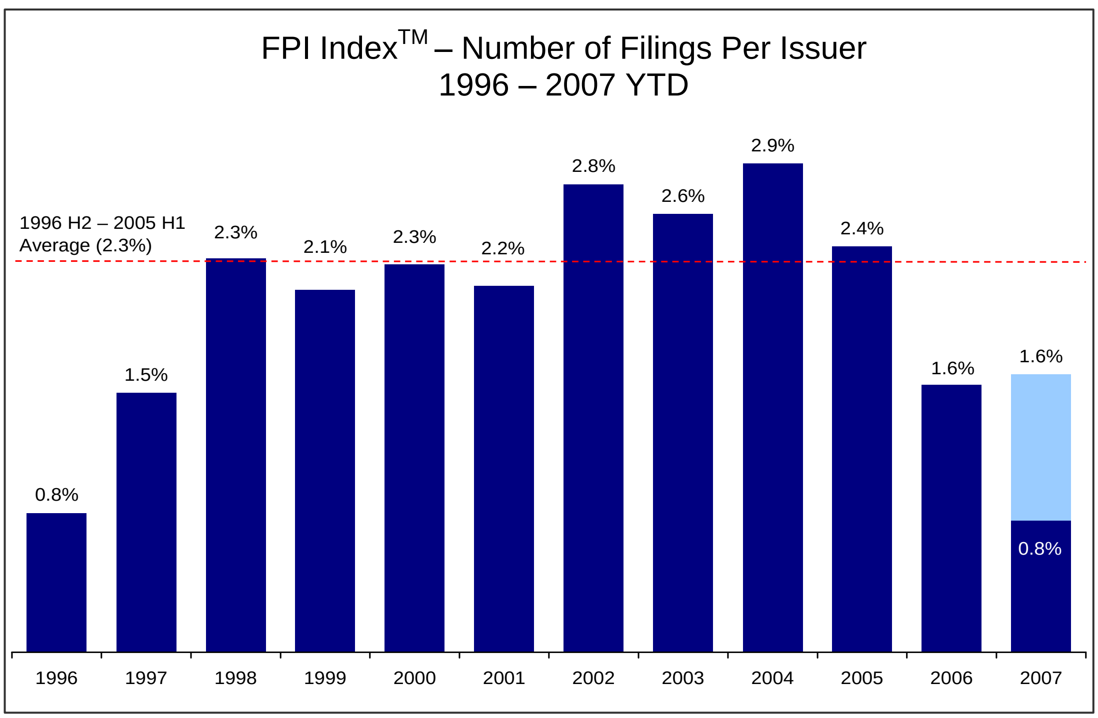
Number of Filings
continued

Exhibit 4



The Filings Per Issuer Index (FPI Index™) also highlights the decreased litigation activity over the prior two years (see Exhibit 5). Of the total companies listed on the NYSE, NASDAQ, and Amex at the start of the year, 1.6 percent were defendants in traditional class action lawsuits filed in 2006 and the first half of 2007, on an annualized basis, as compared to the 2.3 percent annual average from the second half of 1996 through the first half of 2005.

Exhibit 5



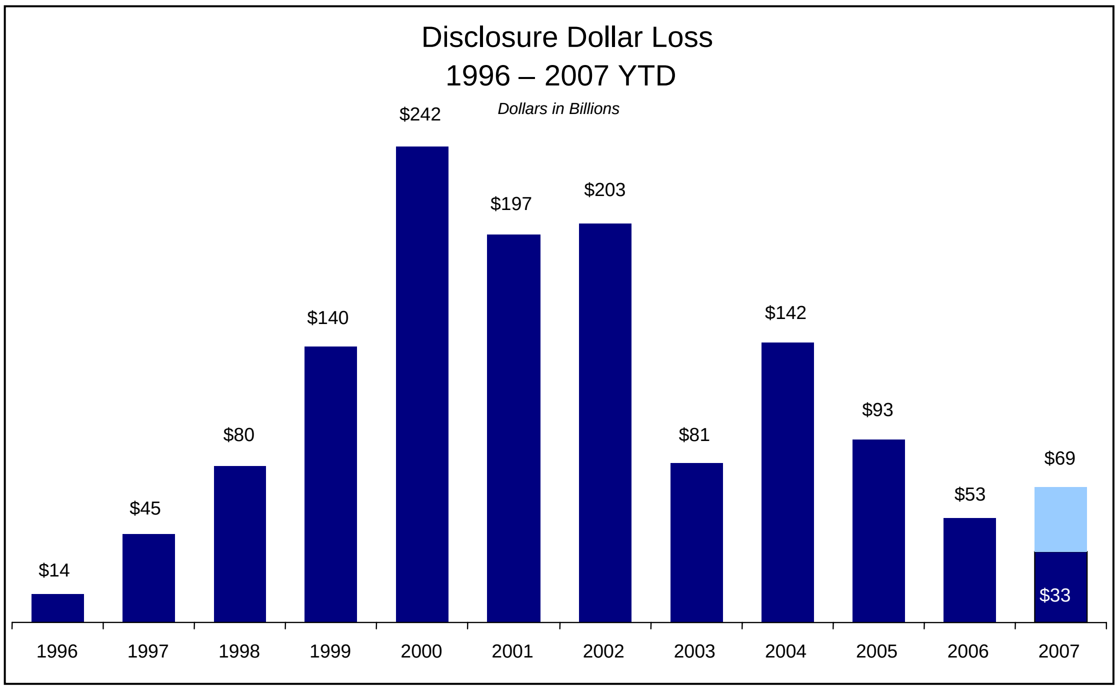
Market Capitalization Declines

To measure the relative size of class action filings, our second group of indices tracks market capitalization declines at the end of and during class periods. Market capitalization declines over extended periods of time may be driven by market and industry factors. To the extent that these declines are unrelated to specific allegations in class action complaints, indices based on aggregate losses during class periods would not be representative of potential defendant exposure to class action activity. This is especially relevant for the post-*Dura* securities litigation environment.[5] We track the market capitalization decrease at the end of each class period using Disclosure Dollar Loss.

The Disclosure Dollar Loss Index (DDL Index™) tracks the running sum of disclosure dollar loss for all class action lawsuits filed year-to-date. Disclosure Dollar Loss is calculated as the decrease in the market capitalization of the defendant firm from the trading day immediately preceding the end of the class period to the trading day immediately following the end of the class period. Disclosure Dollar Loss should not be considered a measure of liability; it only represents an estimate of the impact of the market-, industry-, and firm-specific information revealed at the end of the class period, including information unrelated to the litigation

The DDL Index™ shows an increase in disclosure losses in 2007 from the previous year (see Exhibit 6). Total DDL for the first six months of 2007 was $33 billion. On an annualized basis, this represented an increase of 30 percent relative to 2006 and a decrease of 49 percent relative the average observed over the preceding nine-year period ending June 2005. Disclosure Dollar Loss in 2007 was much lower than the levels reached in 2000 to 2002. This decrease appears to be the result of fewer cases being filed in 2007 and lower average disclosure dollar loss per filing.

Exhibit 6



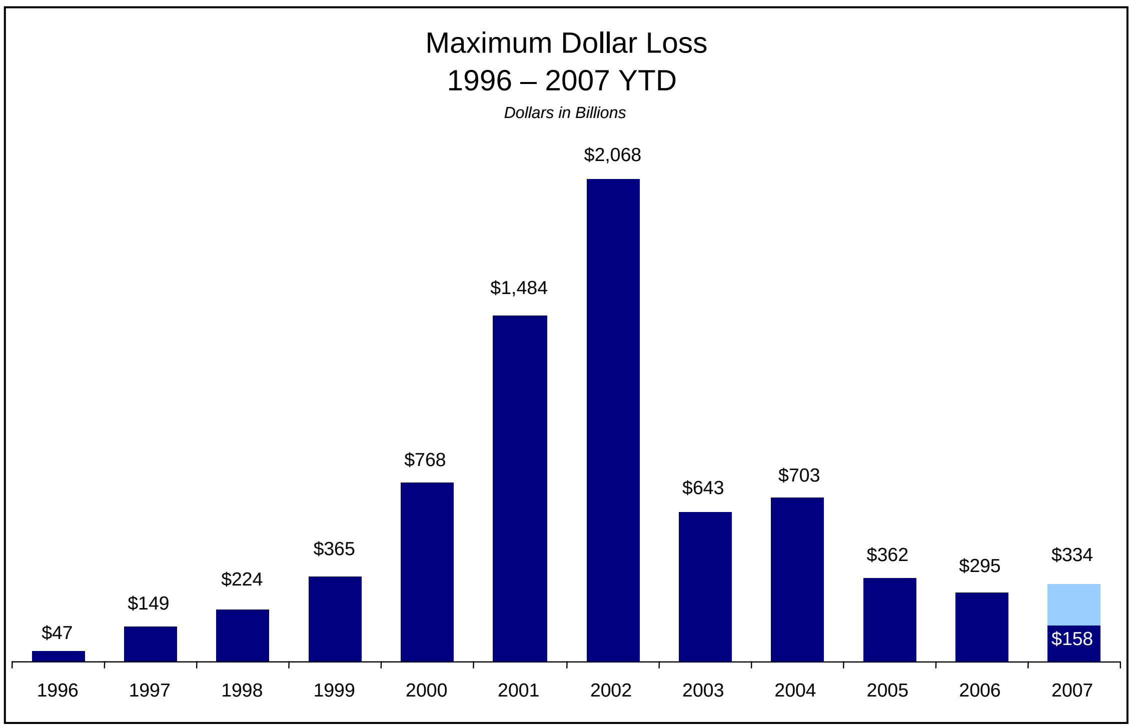
[5] See our 2006 annual publication for discussion of the *Dura Pharmaceuticals* decision.

Market Capitalization Declines *continued*

The Maximum Dollar Loss Index (MDL Index™) tracks the aggregate maximum dollar loss for all class action lawsuits filed year-to-date. It is calculated as the dollar value decrease in the market capitalization of the defendant firm from the trading day on which the defendant firm's market capitalization reached its maximum during the class period to the trading day immediately following the end of the class period. Maximum Dollar Loss does not measure potential liability; rather, it provides an indication of the loss in market value irrespective of the cause. As with the Disclosure Dollar Loss, the Maximum Dollar Loss should not be considered a measure of liability; it only represents an estimate of the impact of the market-, industry-, and firm-specific information revealed during the class period, including information unrelated to the litigation.

Similar to the DDL Index™, the MDL Index™ shows a small increase in market value declines for companies subject to class action filings in 2007 compared to 2006 (see Exhibit 7). Total MDL for the first six months of 2007 was $158 billion. On an annualized basis, total MDL increased 13 percent in 2007 relative to 2006, but is 55 percent lower than the average observed over the nine-year period ending June 2005.

Exhibit 7



Market Capitalization Declines *Continued*

Exhibit 8 provides a more detailed look at the typical filing. The median DDL of $139 million in 2007 was larger than the 2006 median and the historical average. The median MDL of $0.8 billion in 2007 was an increase from the 2006 level of $0.4 billion, and above the historical average for the nine-year period ending June 2005 of $0.6 billion. Finally, the median class-end stock price percentage decline for cases filed in the first of half of 2007 was 16.3 percent, higher than the median decline of 14.3 percent for cases filed in the first half of 2006. This compares to the median decline of 25.6 percent for cases filed during the more volatile period between the second half of 1996 and the first half of 2005. The differences in declines in 2007 and 2006 relative to the earlier period are statistically significant at a 99 percent confidence level.

Exhibit 8

Filings Comparison: 6-Month Periods

	Annual Average (1996 H2 – 2005 H1)	2005 H2	2006 H1	2006 H2	2007 H1
Class Action Filings	101	69	63	53	59
Maximum Dollar Loss					
Total ($ Billions)	$371	$116	$126	$169	$158
Average ($ Billions)	$4.0	$1.8	$2.3	$3.4	$3.0
Median ($ Billions)	$0.6	$0.5	$0.4	$0.4	$0.8
Disclosure Dollar Loss					
Total ($ Millions)	$66,523	$35,388	$22,241	$30,545	$32,559
Average ($ Millions)	$719	$562	$412	$611	$614
Median ($ Millions)	$100	$167	$133	$97	$139
Median % DDL Decline	25.6%	21.4%	14.3%	14.3%	16.3%

Mega Filings

Analysis of "mega" filings shows that the majority of total market capitalization losses associated with class action filings are attributable to only a few cases.[6]

Disclosure Dollar Loss

In the first half of 2007 there have been 2 "mega" DDL filings, i.e. filings with a DDL of $5 billion or more. These 2 filings comprised 61 percent of total DDL in 2007. In contrast, there was 1 "mega" DDL filing in 2006 and it comprised 36 percent of total DDL for that year.

Maximum Dollar Loss

In the first half of 2007 there were 4 "mega" MDL filings, i.e. filings with a MDL of $10 billion or more. These 4 filings comprised 68 percent of total MDL in 2007. This compares with 8 "mega" MDL filings in 2006 comprising 67 percent of total MDL for that year. Of these totals, there were 3 filings both in 2006 and in the first half of 2007 with a MDL in excess of $25 billion.

[6] All numbers in this section are year-to-date and not annualized.

Industry

In the first half of 1997, the Consumer Non-Cyclical sector fell from its lead position in litigation activity as measured by the number of filings, and was replaced by the Communication and Finance sectors, which tied for the lead with 15 filings each (See Exhbit 9).[7] From 1996–2005, Consumer Non-Cyclical and Communications had the highest average number of filings with 23 and 20 filings per half-year period, respectively.

Consumer Non-Cyclical, Communications, and Consumer Cyclical had the highest MDL in 2007. Consumer Non-Cyclical and Communications together accounted for 78 percent of the Maximum Dollar Loss. During the second half of 1996 through the first half of 2005, Communications (which includes, under Bloomberg's classification, most Internet-related companies) was the biggest contributor to the MDL Index™. On an annualized basis, in 2007 compared to 2006, MDL in Technology and Communications sectors combined was down 53 percent compared to an 88 percent increase, on an annualized basis, in MDL in other sectors. 2006 had seen a resurgence of large MDL cases in the Technology and Communications sectors, primarily related to options backdating.

Consumer Non-Cyclical and Communications had the highest DDL in 2007, representing 79 percent of the total, with Consumer Cyclical in a distant third position. Filings in Consumer Non-Cyclical and Communications represented the largest DDL during the period from the second half of 1996 through the first half of 2005.

Exhibit 9

Filings by Industry: 6-Month Periods

Dollars in Billions

	Class Actions Filings					Maximum Dollar Loss					Disclosure Dollar Loss				
Industry	Average 1996 H2 – 2005 H1	2005 H2	2006 H1	2006 H2	2007 YTD	Average 1996 H2 – 2005 H1	2005 H2	2006 H1	2006 H2	2007 YTD	Average 1996 H2 – 2005 H1	2005 H2	2006 H1	2006 H2	2007 YTD
Communications	20	5	8	7	15	$135	$3	$12	$9	$34	$16	$1	$1	$1	$11
Finance	13	7	7	3	15	$44	$6	$3	$7	$6	$9	$3	$1	$2	$2
Consumer Non-Cyclical	23	23	23	15	12	$71	$39	$38	$44	$90	$19	$10	$11	$23	$15
Consumer Cyclical	12	16	6	7	7	$29	$29	$35	$3	$16	$4	$6	$5	$0	$3
Industrial	10	6	6	7	5	$18	$10	$2	$6	$9	$5	$2	$1	$1	$1
Technology	17	9	10	12	3	$51	$29	$35	$101	$1	$10	$14	$2	$4	$0
Energy	2	2	2	2	2	$11	$0	$1	$1	$2	$2	$0	$0	$0	$0
Utilities	2	1	0	0	0	$8	$0	$0	$0	$0	$1	$0	$0	$0	$0
Basic Materials	2	0	1	0	0	$3	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total	101	69	63	53	59	$371	$116	$126	$169	$158	$67	$35	$22	$31	$33

[7] Consumer Cyclical sector includes airlines, apparel, auto manufacturers, auto parts and equipment, distribution/wholesale, entertainment, food service, home builders, home furnishings, housewares, leisure time, lodging, office furnishings, retail, and storage/warehousing. Consumer Non-Cyclical sector includes agriculture, beverages, biotechnology, commercial services, cosmetics/personal care, food, healthcare products, healthcare services, household products/wares, and pharmaceuticals.

Tellabs v. Makor Issues and Rights

In a recent case, the Supreme Court issued an opinion that requires plaintiffs to show convincing evidence of fraud before they can even initiate a lawsuit.[8] "To qualify as 'strong,'" Justice Ginsburg wrote, "an inference of [knowing wrongdoing] must be more than merely plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of a lack of intent to defraud." She continued, "The inference…must be more than merely 'reasonable' or 'permissible'—it must be cogent and compelling, thus strong in light of other explanations. A complaint will survive, we hold, only if a reasonable person would deem the inference of [wrongful intent]…at least as compelling as any opposing inference one could draw from the facts alleged." This opinion requires that plaintiffs show stronger evidence of fraud than what had been required previously.

Subprime Mortgage Market

The first half of 2007 has seen concerns over the subprime mortgage market. Over two dozen lenders have filed for bankruptcy, sought buyers, or ceased operations. Meanwhile, both delinquency rates and foreclosures have risen sharply. There have already been at least 3 filings with allegations related to the subprime mortgage market.

[8] *Tellabs v. Makor* Issues and Rights, Supreme Court Opinion, 6/21/2007, http://www.supremecourtus.gov/opinions/06pdf/06-484.pdf.

Classification of Complaints

The Stanford Law School Class Action Clearinghouse in cooperation with Cornerstone Research tracks the content of class action complaints in addition to the level of filing activity.[9] While the mix of allegations is largely similar, in percentage terms, a comparison of traditional class action cases filed in the first half of 2007 with those filed in 2006 does reveal some changes in the mix of allegations (See Exhbit 10).

- The percentage of filings alleging misrepresentations in financial documents was 92 percent in 2006 and has remained at the same level during the first half of 2007. The percentage of filings alleging false forward looking statements continues to decline modestly with only 64 percent of cases containing such allegations so far this year as opposed to 72 percent in 2006.[10]
- To the extent that specific accounting allegations could be identified in complaints and/or press releases, the presence of such allegations declined during the first half of 2007. The percentage of complaints alleging specific accounting violations decreased to 46 percent in the first half of 2007 from 66 percent in 2006.
- "Other" accounting allegations also decreased in the first half of 2007, comprising only 41 percent of cases with accounting allegations compared with 63 percent in 2006. Accounting for option issuance continues to be the most popular type of other accounting allegation in 2007. The percentage of this type of case was 45 percent, in line with the percentage in 2006 (44 percent).

Exhibit 10

Allegations Box Score

	2006		2007 Half-Year	
	Number	Percentage of total filings	Number	Percentage of total filings
General Characteristics				
10b-5 claims	102	88%	48	81%
Section 11 claims	13	11%	10	17%
Section 12(2) claims	10	9%	5	8%
Allegations				
Misrepresentations in financial documents	107	92%	54	92%
False forward looking statements	83	72%	38	64%
GAAP violations	76	66%	27	46%
Insider trading	43	37%	22	37%

	2006		2007 Half-Year	
	Number	Percentage of cases with alleged GAAP violations	Number	Percentage of cases with alleged GAAP violations
Specifics of Accounting Allegations				
Overstatement of other assets [1]	9	12%	8	30%
Revenue recognition	27	36%	6	22%
Understatement of expenses	36	47%	3	11%
Overstatement of accounts receivable	6	8%	3	11%
Overstatement of inventory	4	5%	3	11%
Understatement of liabilities	8	11%	2	7%
Estimates	1	1%	2	7%
Acquisition accounting	4	5%	1	4%
Non-recurring items	3	4%	0	0%
Derivatives/hedging	0	0%	0	0%
Other	48	63%	11	41%

[1] Defined as all assets other than accounts receivable and inventory.

[9] The classifications are based on first identified complaint. Additional allegations and defendants may be added in subsequent complaints and not captured in these analyses.
[10] Some filings are included in multiple classifications.

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