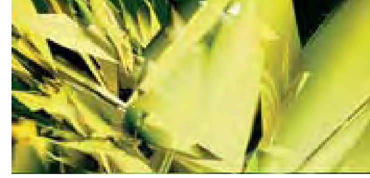
CORNERSTONE RESEARCH

Securities Class Action Settlements

2008 Review and Analysis

Ellen M. Ryan
Laura E. Simmons





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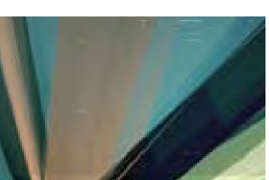
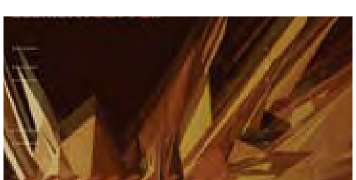
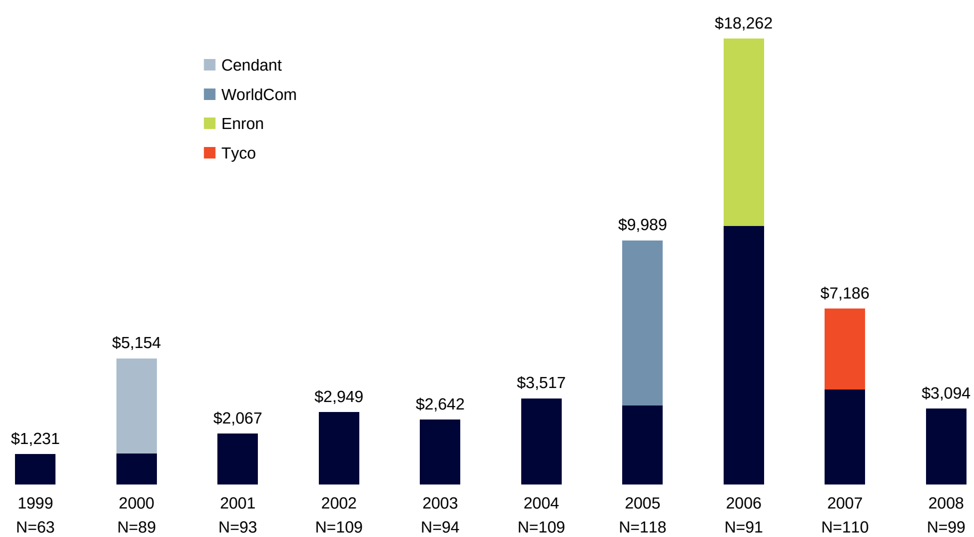



Amid the turmoil of recent economic conditions, the number of securities class action settlements approved in 2008 was lower than the number of settlements in 2007 but not dramatically different from earlier years. In 2008, 99 securities class action cases settled, a slight decline from the 2007 total of 110. In dollar terms, the value of cases settled in 2008 was lower than the historically unprecedented high totals reported from 2005 through 2007.[1]

Ninety-nine securities class action cases settled in 2008, a 10% decline from 2007

TOTAL SETTLEMENT DOLLARS BY YEAR
1999–2008
Dollars in Millions



Settlement dollars adjusted for inflation; 2008 dollar equivalent figures shown.

Figure 1

Looking more closely at the cases settled in 2008, the largest industry concentration among settled cases was for issuers with a primary business in the high-technology sector (19 firms), followed by the telecommunications sector (13 firms), and the finance sector (12 firms). In keeping with historical data, two-thirds of the cases settled in 2008 were for issuers whose common stock traded on NASDAQ. Typically, cases in our sample settled approximately three years after filing; however, for cases settled in 2007 and 2008, the average time from filing to settlement approval increased to three and one-half years. The length of class periods has also been increasing steadily. The average length of a class period among settlements in 2008 was more than 800 days, well above the average of 518 days for all previous settlements through 2007.

This report discusses these and other findings in further detail, updating our previous reports on case settlements filed since the Private Securities Litigation Reform Act (Reform Act) was passed in late 1995. Our sample includes more than 1,000 class actions settled from 1996 through 2008. Cases in our sample are limited to those involving allegations of fraudulent inflation in the price of a corporation's common stock. These cases are identified by Institutional Shareholder Services' Securities Class Action Services (SCAS). For purposes of our research, the designated settlement year corresponds to the year in which the hearing to approve the settlement was held. Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[2]

The median amount for cases settled in 2008 was $8 million. While this amount is lower than 2007's all-time high, single-year median of $9 million, it represents an increase over the median for all the cases settled from 1996 through 2007.

In contrast, the average settlement fell dramatically from $62.7 million in 2007 to $31.2 million in 2008. The average settlement decline is partly due to the fact that there were no approved settlements in excess of $1 billion in 2008, while the third largest securities class action settlement in history (Tyco International) was reported in 2007. Overall, there have been nine settlements in excess of $1 billion over the previous 10 years. If we exclude the top four settlements of all time from the analysis, the average settlement amount of $31.2 million in 2008 is in line with the historic average of $34.6 million for cases settled through 2007.[3]

The average settlement fell dramatically from $62.7 million in 2007 to $31.2 million in 2008

SETTLEMENT SUMMARY STATISTICS

	2008	Settlements Through 2007
Minimum	$0.4 million	$0.1 million
Median	$8.0 million	$7.4 million
Average	$31.2 million	$57.7 million
Maximum	$0.8 billion	$7.7 billion
Total Amount	$3.1 billion	$53.6 billion

Settlement dollars adjusted for inflation; 2008 dollar equivalent figures shown. Excluding the top four settlements detailed in Figure 1, the average and total values are $34.6 million and $32.0 billion for all settlements through 2007.

Figure 2

Overall, the distribution of settlement amounts in 2008 was similar to that in 2007. As in 2007, just over half of 2008 settlements were for less than $10 million. On an aggregated basis, more than 60% of settlements through 2007 were for less than $10 million. Continuing a trend first observed in 2007, the number of very small settlements declined in 2008 and, at the same time, medium-size settlements (for example, in the $20–$50 million range) showed a corresponding increase. The proportionate share of settlements in excess of $100 million remains virtually unchanged from settlements through 2007 at approximately 6%.

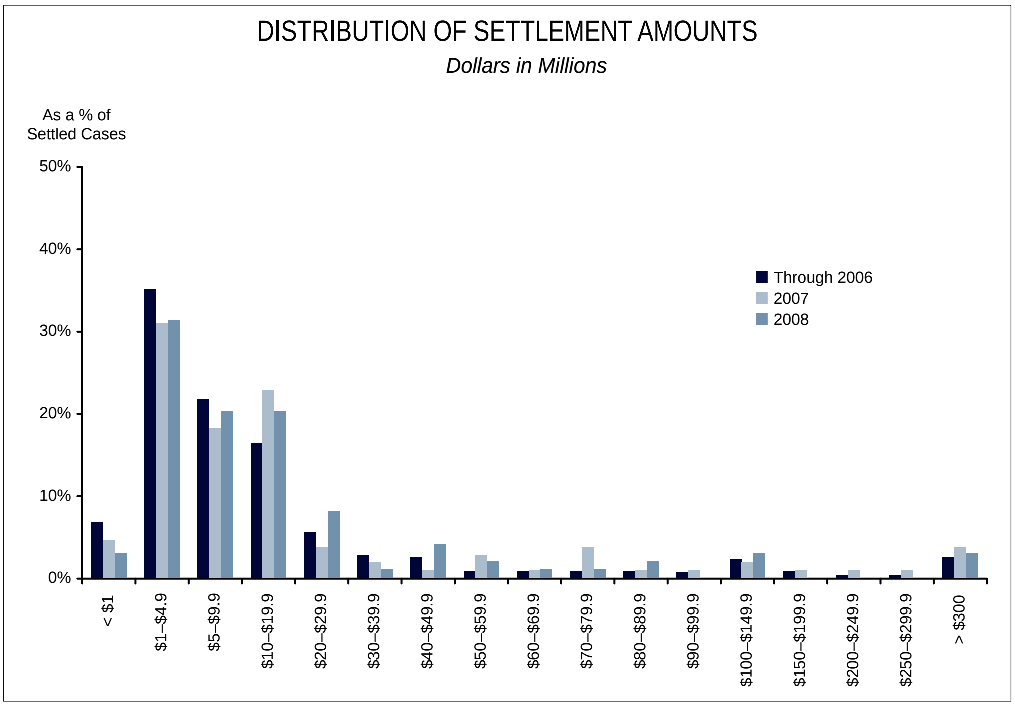
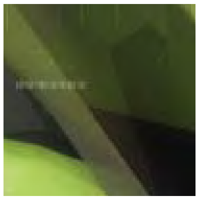


Figure 3

In 2008 over half of the settlements were for less than $10 million



For purposes of our research, we use a highly simplified approach to estimate damages, adopted with certain modifications from a methodology historically used by plaintiffs.[4] In particular, our method makes no attempt to link shareholder losses to allegations included in the complaint. Accordingly, the "estimated damages" presented in this report are not intended to be indicative of actual damages borne by shareholders. While various models and alternative calculations could be used to assess potential exposure in a class action, applying a consistent method in our calculations of estimated damages allows us to examine trends in these amounts.[5]

Following the exceptionally high estimated damages observed for settlements approved in 2006, *average* estimated damages decreased dramatically for 2007 settlements and continued to decline in 2008. Average estimated damages, adjusted for inflation, for settled cases in 2008 fell to levels below those in 2003 through 2005. As described in our earlier reports, estimated damages for cases settled in 2006 and 2007 included more than 25 settlements with estimated damages of more than $5 billion; in 2008, the number of settled cases with damages above this level fell to five cases. *Median* estimated damages increased just over 10% from $218 million in 2007 to $242 million in 2008.

Average estimated damages continued to decline substantially

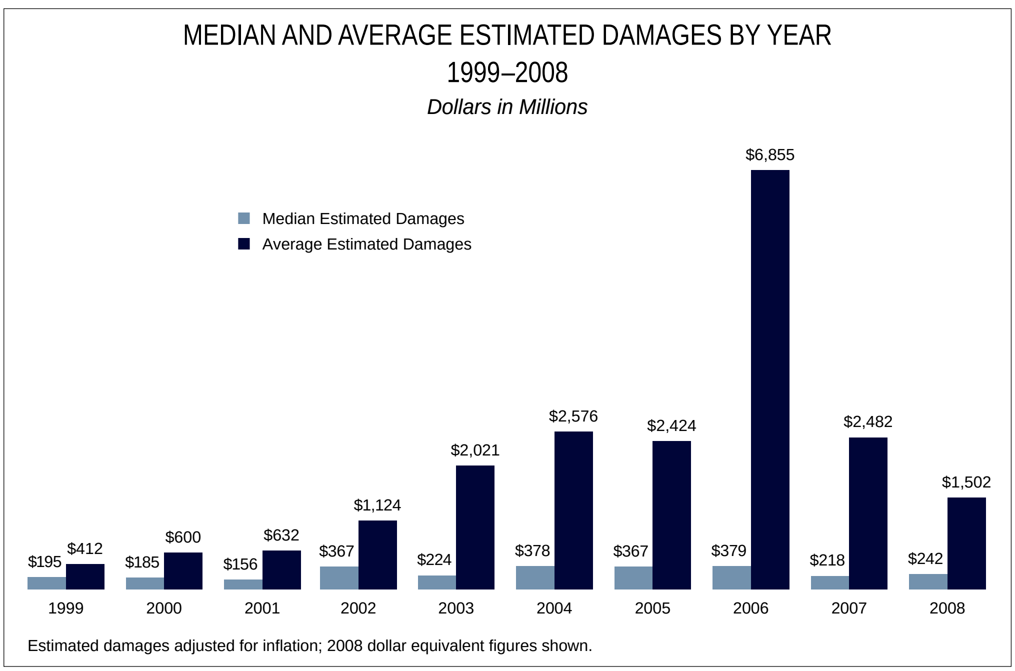
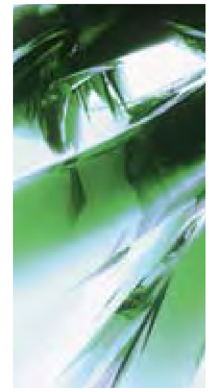


Figure 4



The percentage of settled cases involving estimated damages in excess of $1 billion (referred to as "mega-damages") had increased every year since 1999 until peaking in 2006 at 35% of settlements. In 2007 that share fell to 25% and continued to fall to 20% (20 cases) in 2008—the lowest percentage in five years.

In 2008 the total value of settlements involving the 20 cases with damages over $1 billion represented 71% of total settlement dollars, in line with 2002–2005 levels. This is a significant decline from the unusually high levels recorded in 2006 and 2007.

The percentage of cases with estimated damages over $1 billion was the lowest since 2003

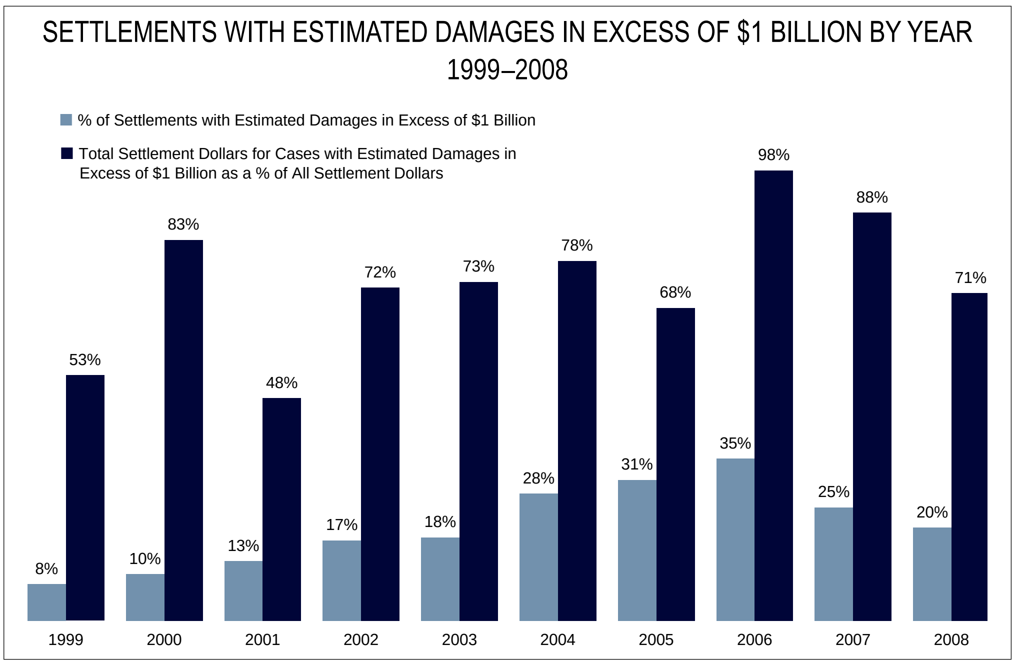
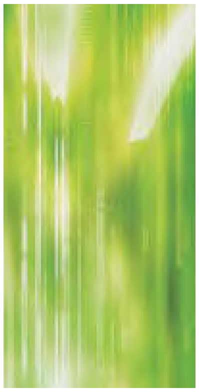


Figure 5



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As we have described in previous reports, settlements as a percentage of estimated damages generally decrease as damages increase. Accordingly, following the dramatic escalation in estimated damages that began in 2002, we have observed lower median settlements relative to estimated damages. However, perhaps in part as a result of the decrease in estimated damages in 2008, the median settlement as a percentage of estimated damages was slightly higher than the median from 2002 through 2007. Median settlements as a percentage of estimated damages in almost all damage ranges were higher for settled cases in 2008 compared to settlements reported during the six-year period, 2002 through 2007. The comparatively high percentage for settlements in 2008 with estimated damages between $50 and $125 million reflects seven cases with estimated damages at the upper end of this range that settled for unusually high amounts relative to estimated damages.

Using regression analysis to determine the relation between estimated damages and settlement amounts while controlling for other factors, we find a statistically significant difference in the relation between settlements and estimated damages for cases with estimated damages of more than $1 billion (that is, a dollar increase in damages for these large cases is associated with a smaller increase in settlement amounts, relative to cases with estimated damages of less than $1 billion; see page 18 for further details).

Settlements as a percentage of estimated damages generally decrease as estimated damages increase

MEDIAN SETTLEMENTS AS A PERCENTAGE OF ESTIMATED DAMAGES BY DAMAGE RANGE

Dollars in Millions

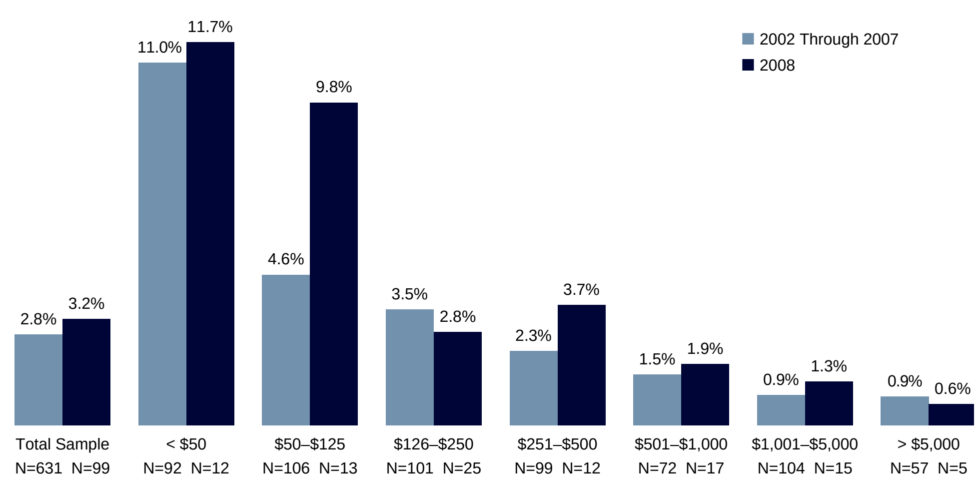


Figure 6

As discussed in the recent report, *Securities Class Action Filings 2008: A Year in Review*, released by the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research (*2008 Filings Report*), Disclosure Dollar Loss (DDL) is calculated as the decline 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. This measure is not intended to represent an estimate of damages, as it does not isolate movements in the defendant's stock price that are unrelated to case allegations. Nor does this measure capture additional stock price declines during the alleged class period that may affect certain purchasers' potential damage claims. Further, the DDL calculation does not require application of a trading model to estimate the number of shares damaged.[6]

Settlements as a percentage of DDL generally decline as DDL increases, similar to the trend observed with estimated damages.

At $110 million, median DDL for cases settled in 2008 was one of the highest among all post–Reform Act years, second only to the median of $134 million for cases settled in 2007. However, despite the increase in median DDL in recent years, settlements as a percentage of DDL were slightly higher in 2008 compared to prior years.

The median DDL was one of the highest in all post–Reform Act years

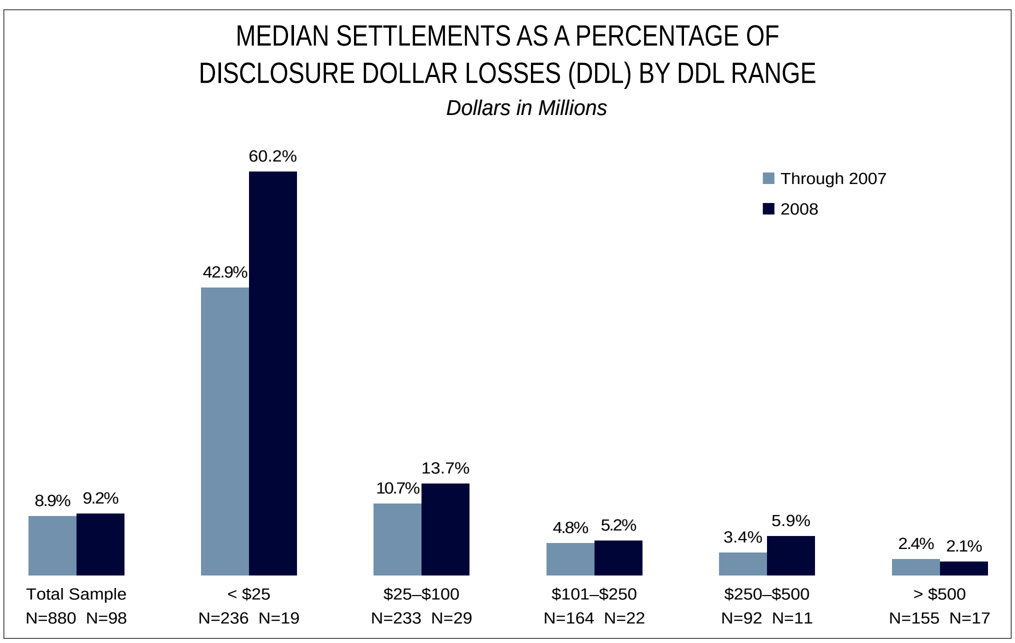


Figure 7

In 2008 Generally Accepted Accounting Principles (GAAP) allegations were included in almost 70% of settled cases, one of the highest proportions among all post–Reform Act years. Furthermore, these cases continued to be resolved with a larger settlement amount and a higher percentage of estimated damages relative to cases not involving accounting allegations.

Following a two-year decline in the proportion of cases involving restatements of financial statements, in 2008 the proportion increased to 35% of settlements. The majority of 2008 settlements (85 out of 99) were for cases filed in 2003 or later—after the Sarbanes-Oxley Act (SOX) was passed in 2002. Under SOX, companies with a market capitalization in excess of $75 million have stricter reporting guidelines, and evidence suggests that the process of complying with these requirements led to an increase in restatements. It is possible that improvements in corporate governance as a result of SOX may ultimately lead to a decrease in restatement-related class actions; however, we anticipate that it may still be a few years before this trend can be discerned.

Although accountants were named in less than 20% of post–Reform Act settlements through 2008, cases in which an accountant was a named defendant continued to settle for the highest percentage of estimated damages among cases with accounting allegations.

Almost 70% of settled cases included GAAP allegations, one of the highest proportions in all post–Reform Act years

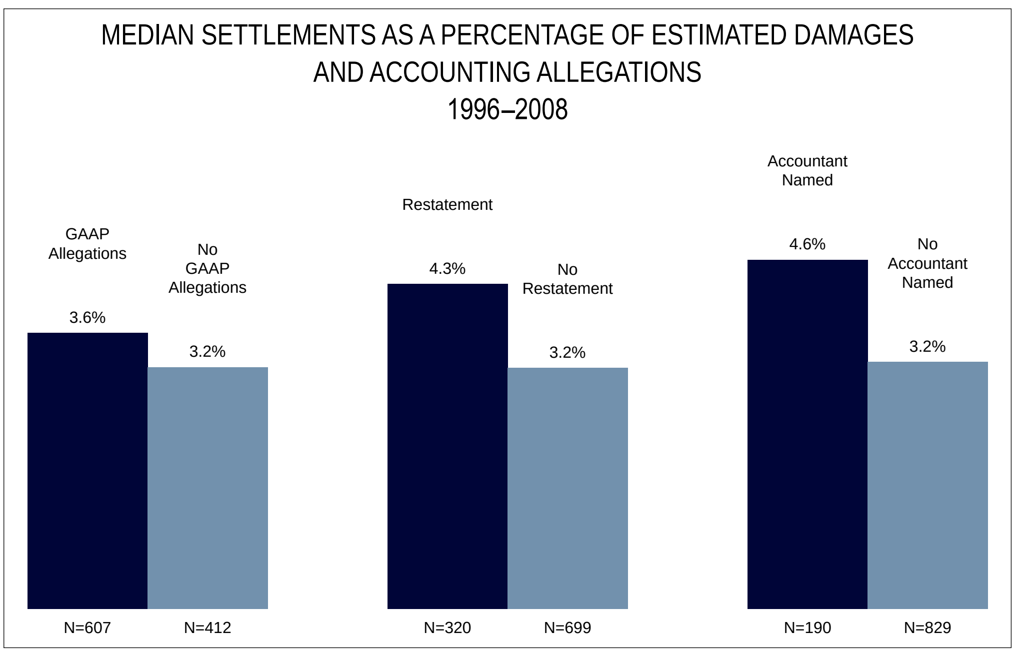


Figure 8

RESTATEMENTS AND SECURITIES CLASS ACTION SETTLEMENTS

A significant amount of literature emerged following the passage of SOX speculating on the potential impact of the additional compliance requirements on corporate governance, as well as the number of financial statement restatements. As discussed in the media, there was an expectation that the volume of restatements would increase in the years immediately following the passage of SOX but that there would be an eventual slowdown.[7]

The data do not yet provide evidence of a clear trend regarding the frequency of restatements as a factor in securities litigation. However, the data do reveal a shift in the effect of restatements on settlement amounts in securities class actions in recent years. Specifically, we find that controlling for the presence of an accountant defendant and other factors, restatements are no longer associated with a statistically significant increase in settlement amounts. This result is consistent with research that concludes that restatement announcements are viewed by the market as less significant events. For example, a working paper authored by economists at the Public Company Accounting Oversight Board indicates that generally the magnitude of the market's initial reaction to restatement announcements has declined since the passage of SOX. The study states that "Post-SOX, investors behave as if they believe the announcements convey timelier and higher quality information, and leave them with less uncertainty about companies announcing restatements."[8] If this is the case, it may explain in part the diminished importance of restatements as predictors of settlement amounts.

Median settlements are higher for cases involving Section 11 and/or 12(a)(2) claims

Almost 22% of post–Reform Act settlements involve Section 11 and/or 12(a)(2) claims. Median settlement amounts and median settlements as a percentage of estimated damages continued to be higher for these cases than for cases without these allegations. In cases involving an underwriter as a named defendant, settlements as a percentage of estimated damages were even higher.

Although there is considerable overlap between the inclusion of an underwriter as a named defendant and the presence of Section 11 and/or 12(a)(2) claims, underwriters were named in less than 15% of all cases. Multiple regression analysis shows that, after controlling for the presence of an underwriter defendant and other factors, Section 11 and/or 12(a)(2) claims are not associated with a statistically significant increase in settlement amounts. However, as noted in the *2008 Filings Report*, filings of class actions alleging Section 11 and/or 12(a)(2) claims reached historically high levels in 2007 and 2008. As these newly filed cases settle over the next few years, the importance of Section 11 and/or 12(a)(2) claims in determining settlement amounts may increase.

MEDIAN SETTLEMENTS AS A PERCENTAGE OF ESTIMATED DAMAGES AND SHARE ISSUANCE ALLEGATIONS 1996–2008

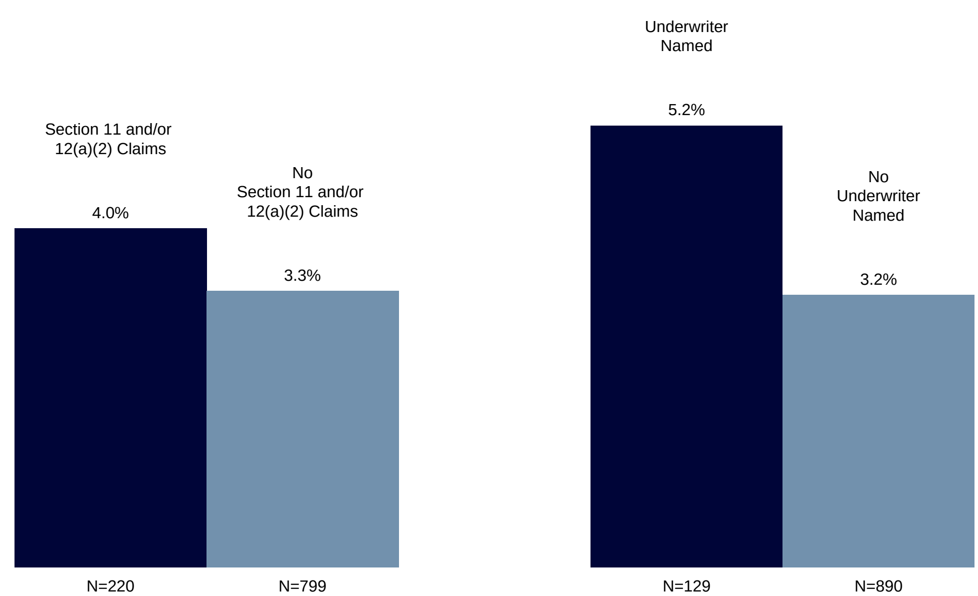
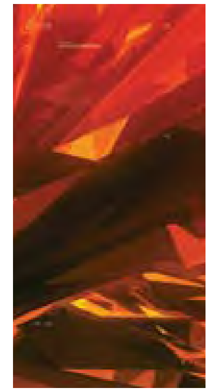


Figure 9

Only a fraction of the cases in our sample did not involve Rule 10b-5 claims (that is, involved only Section 11 and/or 12(a)(2) claims).[9] Median settlements are generally lower for this group of cases ($3.5 million) relative to cases involving Rule 10b-5 claims, while median settlements as a percentage of estimated damages are higher (6.5%).[10]



As industry observers, researchers, and academics have noted, institutional investors continue to actively participate in post–Reform Act class actions, often choosing to serve as lead plaintiffs. In 2008 institutions served as lead plaintiffs in more than 60% of settlements.

Cases involving institutional investors as lead plaintiffs are associated with significantly higher settlements. Our sample identifies both public pension plans and union funds as a subset of all institutional investors. While the frequency of union funds acting as lead plaintiffs has increased in the last few years, closer analysis reveals that the higher settlements in cases with institutional investors as lead plaintiffs are associated with public pension plans, as opposed to union funds or other types of institutional investors.

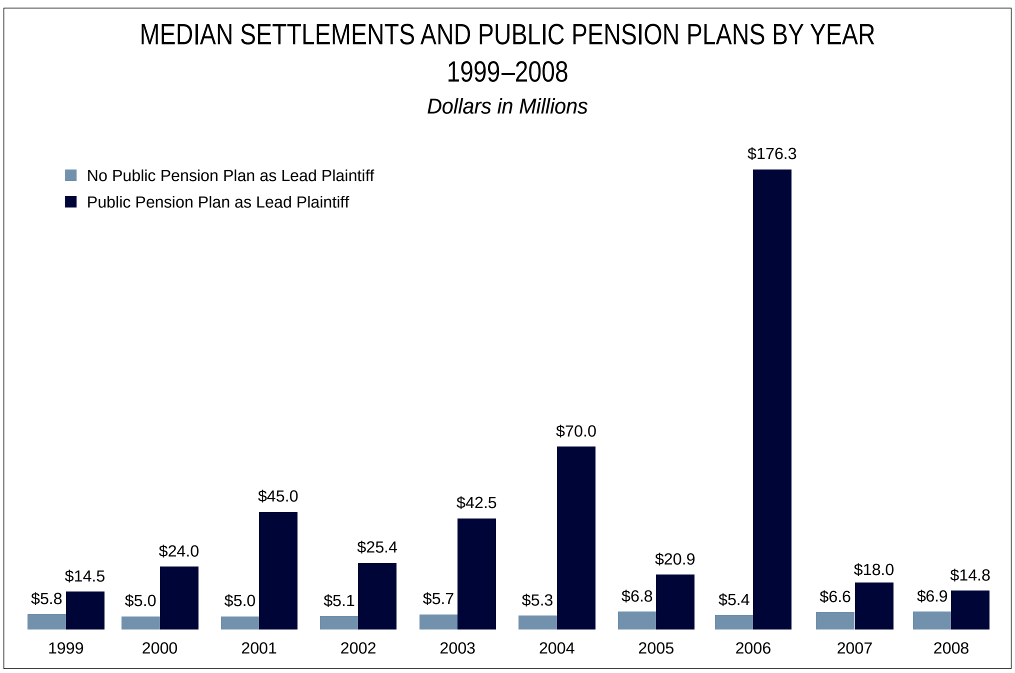


Figure 10

Institutions were lead plaintiffs in more than 60% of settlements

There is not necessarily a causal effect between public pension plan involvement and settlement outcomes, as it is possible that these sophisticated investors choose to participate in stronger cases. In addition, part of the reason for higher settlements in these cases is because public pension plans tend to participate in larger cases. However, the presence of a public pension plan as lead plaintiff is associated with a statistically significant increase in settlement size, even when controlling for estimated damages (case size) and other factors that affect settlement amounts (such as the nature of the allegations). A list of control variables considered when testing the effect of public pension plans serving as lead plaintiffs can be found on page 18.

2008 saw a decrease in the number of cases involving derivative actions, reversing a recent trend

Reversing a recent trend, the number of cases involving companion derivative actions decreased in 2008 compared to prior years. Only slightly more than 40% of cases settled in 2008 were accompanied by a derivative action filing, compared with 55% in 2007 and 45% in 2006.[11] While settlement of a derivative action, whether coinciding with a settlement of the underlying class action or occurring at a different time, does not necessarily result in a cash payment,[12] settlement amounts for class actions accompanied by derivative cases are significantly higher than those for cases without them.

Settlements as a percentage of estimated damages for cases with accompanying derivative actions are slightly lower than for cases with no identifiable derivative action, which may reflect the larger estimated damages associated with the former group of cases. (And, as we have noted, settlements as a percentage of estimated damages generally decrease as estimated damages increase.)

Derivative actions tend to be associated with larger class action cases (as measured by estimated damages and the assets of the issuer defendant) as well as class actions involving accounting allegations, actions by the Securities and Exchange Commission (SEC), and public pension plans as lead plaintiffs. Using regression analysis to control for other factors that influence class action settlements, we find that cases involving derivative actions are associated with statistically significant higher settlement amounts.

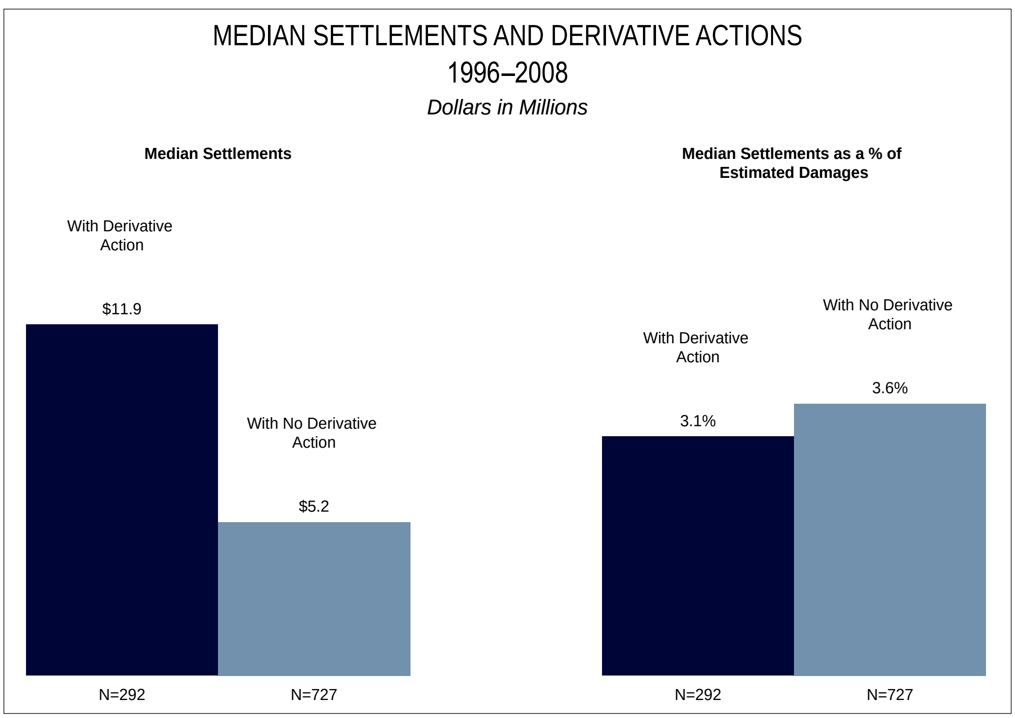


Figure 11

Almost 25% of all post–Reform Act settlements have involved SEC actions (evidenced by the filing of a litigation release or administrative proceeding), a slight increase over the proportion reported in our 2007 review. As shown, cases that involve SEC actions are associated with significantly higher settlements, as well as, interestingly, higher settlements as a percentage of estimated damages.

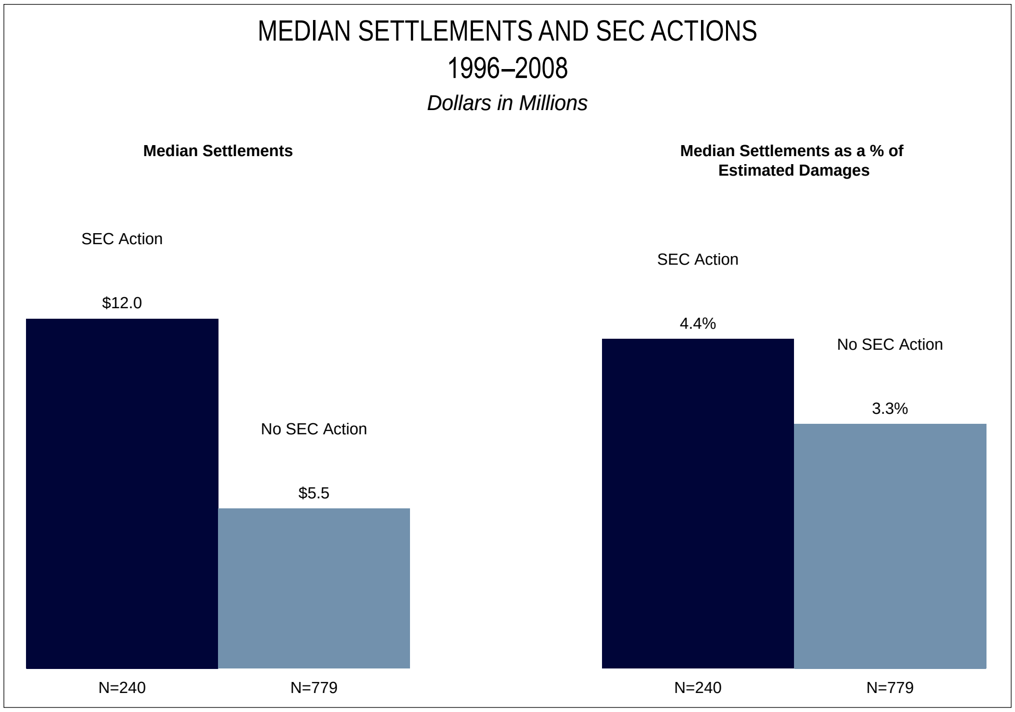


Figure 12

Cases involving SEC actions have significantly higher settlements

The percentage of settlements involving non-cash components (such as stock or warrants) had generally declined during post–Reform Act years. In 2008, however, 9% of settlements included non-cash components, an increase over the prior four years. Possibly reflecting current economic conditions, the median percentage of the total settlement value from the non-cash components included in settlement funds in 2008 was at a 10-year low.

The inclusion of non-cash components in settlements is associated with a statistically significant increase in settlement value, even when controlling for other factors such as estimated damages and the nature of the allegations.

In 2008 the percentage of settlements with non-cash components was the highest since 2003

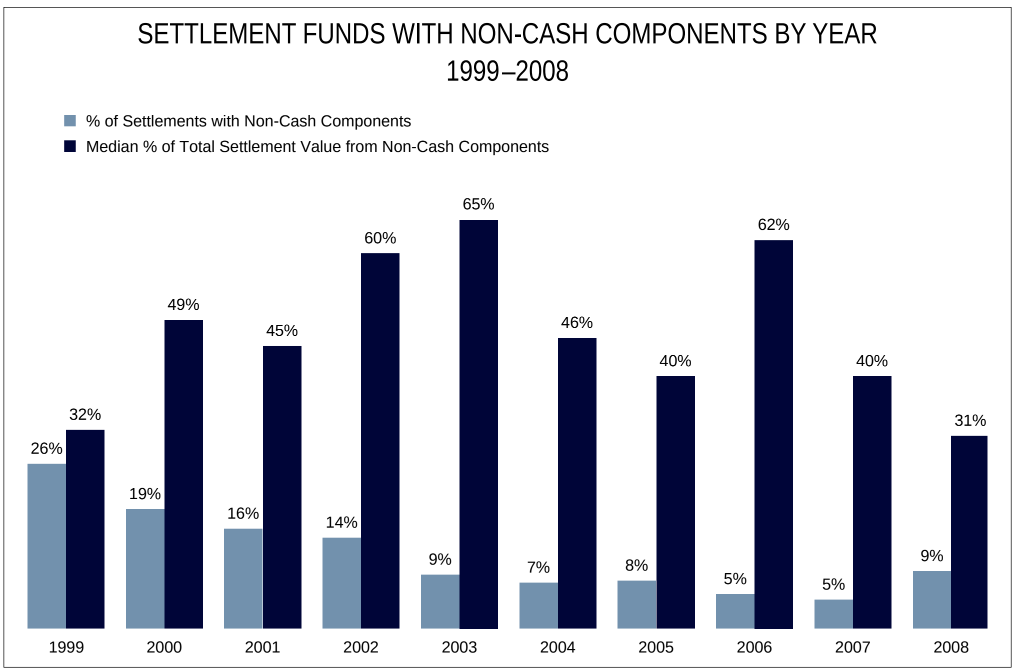
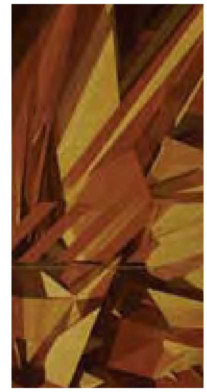


Figure 13



In previous years, we reported that the law firms of Coughlin Stoia Geller Rudman & Robbins (Coughlin Stoia) and Milberg, as well as their predecessor firm Milberg Weiss Bershad Hynes & Lerach, were involved as lead or co-lead plaintiff counsel in approximately half of all post–Reform Act settlements.[13] While Coughlin Stoia and Milberg have maintained a significant share of the securities class action settlements, other firms have increased the frequency of their appearance as lead or co-lead counsel. The law firm of Schiffrin & Barroway (since changed to Barroway Topaz Kessler Meltzer & Check) continues to play an important role as lead/co-lead plaintiff counsel, participating in as many as 15% of settled cases in the last two years. In addition, the law firm of Labaton Sucharow has emerged as a significantly more active lead/co-lead plaintiff counsel with 11% of securities case settlements in 2008, compared to 5% in 2007.

SETTLEMENTS BY PLAINTIFF LAW FIRM

	2008		2007	
Plaintiff Law Firm	% of Settled Cases	Median Settlement as a % of Estimated Damages	% of Settled Cases	Median Settlement as a % of Estimated Damages
Coughlin Stoia	24%	3.2%	37%	3.5%
Barroway Topaz Kessler Meltzer & Check	12%	5.0%	15%	1.3%
Labaton Sucharow	11%	3.5%	5%	3.7%
Milberg	11%	2.4%	9%	1.9%
Bernstein Litowitz Berger & Grossmann	8%	6.0%	7%	2.5%
Cohen Milstein Sellers & Toll	7%	1.8%	6%	2.5%
Stull, Stull & Brody	3%	0.8%	2%	4.1%
Berman DeValerio	3%	0.7%	3%	1.5%
Bernstein Liebhard	3%	2.5%	5%	1.5%

Figure 14

The dominance of plaintiff law firms serving as lead or co-lead counsel continues to shift

The Second Circuit (Connecticut, New York, and Vermont) took over the lead in terms of the number of settled cases with 25 settlements, followed closely by the Ninth Circuit with 18 cases settled in 2008. Among the most active jurisdictions, median settlements were also higher for the Second Circuit. Although court circuits are generally not statistically significant in explaining settlement size, compared to all other circuits combined, settlements are higher in the Second Circuit when controlling for the effects of estimated damages and other determinants of settlement amounts.

In 2008 high median settlements for cases in the Second Circuit were driven by a concentration of cases in the financial sector

SETTLEMENTS BY COURT CIRCUIT

Dollars in Millions

	Number of Cases		Median Settlement	
Court Circuit	2008	Through 2007	2008	Through 2007
1	6	58	$10.9	$5.6
2	25	150	$13.5	$7.9
3	9	87	$18.0	$5.8
4	4	30	$4.8	$7.5
5	9	75	$5.9	$5.4
6	4	46	$171.5	$12.2
7	2	47	$10.5	$7.5
8	6	31	$7.1	$9.0
9	18	236	$10.9	$6.4
10	2	40	$5.1	$7.0
11	12	93	$2.4	$4.5
DC	1	2	$43.1	$18.5
State	1	34	$3.2	$3.9
Total	99	929	$8.0	$6.1

Figure 15

As discussed above, median settlements were higher in 2008 for cases in the Second Circuit. Driving the higher median settlement amounts in the Second Circuit is the concentration of securities class actions filed against companies in the financial sector. When considering all settled post–Reform Act cases, the Second Circuit also has a slight lead over the other circuits with the number of settled cases for issuers in the telecommunications sector—the sector with the second highest median settlement after the financial sector. In spite of the differences observed in median settlement sizes across industries, when using multiple regression analysis to control for other variables that affect settlement amounts, industry classifications are not significant predictors of settlement amounts.

RECENT SUBPRIME SETTLEMENT ACTIVITY

As noted in the recent *2008 Filings Report*, an unprecedented wave of securities class actions filed against firms in the financial sector occurred during 2008. The majority of those case filings related to the subprime/liquidity crisis. In the weeks prior to publication of this study, Merrill Lynch announced a preliminary $475 million settlement in such an action (the Merrill settlement), the largest settlement among the three "subprime" cases that have announced settlements to date. The settlement hearing date to approve the Merrill settlement is scheduled for later in 2009. Relative to prior securities class actions, the Merrill case reached the preliminary settlement stage relatively quickly (less than 18 months from the first filing date to the settlement announcement).

Due to their unique nature, it is possible that the characteristics of the settlements of these cases will differ from other securities class actions. However, as only three of these cases have settled to date, it is still too early to anticipate what impact, if any, settlements of cases that arose from the subprime/liquidity crisis might have on settlement trends overall.

CORNERSTONE RESEARCH SETTLEMENT PREDICTION MODEL

Features of securities cases that may affect settlement outcomes are often correlated, as noted in the discussion and charts in this report. Regression analysis makes it possible to examine the effects of these factors simultaneously. Accordingly, as part of our ongoing research on securities class action settlements, we applied regression analysis to study the determinants of settlement outcomes. Analysis performed on our sample of post–Reform Act cases settled through December 2008 reveals that variables that are important determinants of settlement amounts, either independently or in combination, include:[14, 15]

- Simplified plaintiff-style estimated damages
- Disclosure dollar losses (DDL)
- Most recently reported total assets of the defendant firm
- Number of entries on the lead case docket
- Indicator of whether intentional misstatements or omissions in financial statements were reported by the issuer
- Indicator of whether a corresponding SEC action against the issuer or other defendants is involved
- Indicator of whether an accountant is a named co-defendant
- Indicator of whether an underwriter is a named co-defendant
- Indicator of whether a corresponding derivative action is filed
- Indicator of whether a public pension plan is a lead plaintiff
- Indicator of whether non-cash components, such as stock or warrants, make up a portion of the settlement fund
- Indicator of whether securities other than common stock are alleged to be damaged
- Indicator of whether the issuer is financially distressed
- Indicator of whether the case was filed in the Second Circuit
- Indicator of whether estimated damages are greater than $1 billion

Settlements are higher when estimated damages, DDL, defendant asset size, or number of docket entries are higher. Settlements are also higher in the presence of intentional misstatements or omissions in financials reported by the issuer, a corresponding SEC action, an accountant named as co-defendant, an underwriter named as co-defendant, a corresponding derivative action, a public pension fund involved as lead plaintiff, a non-cash component to the settlement, or securities other than common stock alleged to be damaged. Settlements are lower if the issuer is experiencing financial distress or if estimated damages exceed $1 billion.

CONCLUSION

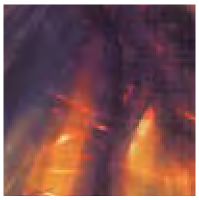
Given the severity of the economic downturn in 2008, it is reasonable to expect that securities class action settlements would be affected in some manner. However, predicting the specific effects of the economic crisis on securities case settlements is difficult because of confounding factors. For example, economic conditions, to the extent they serve as a constraint on firms' ability to fund settlements (including defendant firms' insurers), may cause the rate of settlements to slow and also lead to a decrease in the dollar amount of settlements. On the other hand, such conditions may serve to motivate defendants to settle more quickly to minimize the costs of carrying the litigation (including distraction of management attention), and for similar reasons could encourage plaintiffs and/or plaintiff counsel to settle cases more rapidly.

To date, the data do not suggest a strong trend in either direction. Specifically, we did not observe a dramatic change in the rate of settlements. We also observed higher (rather than lower) settlements as a percentage of estimated damages in 2008. However, this latter finding is likely affected by the fact that average estimated damages fell significantly from recent years. As previously explained, cases tend to settle for proportionately higher amounts the smaller they are in terms of size (i.e., damages).

We also observed an unusual pattern in that, while average estimated damages fell in 2008, a related measure of investor losses (Disclosure Dollar Loss, or DDL) was higher in 2008 in comparison to almost all previous years. DDL is based on the stock price decline immediately following the end of the class period, while estimated damages is based on a calculation of losses over the entire class period. Thus, this finding could be a function of varying market volatility. Finally, there were fewer settlements in 2008 with very small DDL values, which contributed to the increased median DDL.

Not surprisingly, given the recent stock market decline, securities class action filings in 2008 have returned to levels well above the 10-year average as described in the *2008 Filings Report*. As these cases are resolved, in the next few years we could expect to see the number of settled cases increase as well. Similarly, based on the research in the same report, DDL reached historic highs in 2008. Total DDL of $227 billion in 2008 was 48% higher than in 2007 and 75% higher than the annual average for the 11 years ending in December 2007. As mentioned earlier, DDL is a significant predictor of settlement sizes, and, accordingly, we expect that settlement sizes may increase in the future.

SAMPLE AND DATA SOURCES



The sample of cases discussed in this report is from Institutional Shareholder Services' Securities Class Action Services (SCAS). Our database is limited to cases alleging fraudulent inflation in the price of a corporation's common stock (that is, excluding cases filed only by bondholders, preferred stockholders, and the like, as well as cases alleging fraudulent depression in price). Our sample is also limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.

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

ENDNOTES

1 The three largest settlements of all time—the $6.2 billion settlement in the WorldCom matter, the $7.2 billion settlement in the Enron matter, and the $3.2 billion settlement in the Tyco International matter—were approved between 2005 and 2007. Although the WorldCom and Enron settlements were composed of a number of partial settlements, we categorize WorldCom as a 2005 settlement and Enron as a 2006 settlement.

2 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports. For a settlement to be moved from inclusion in an earlier to a more recent year, the subsequent partial settlement must be at least half of the then-current settlement total.

3 Specifically there was one settlement in excess of $1 billion in each of the years 2000, 2005, and 2007, and six in 2006.

4 Our simplified plaintiff-style model is applied to common stock only. For all cases involving Rule 10b-5 claims, damages are determined from a market-adjusted backward value line. For cases involving only Section 11 and/or 12(a)(2) claims, damages are determined from a model that caps the purchase price at the offering price. A volume reduction of 50% for shares traded on NASDAQ and 20% for shares listed on NYSE or AMEX is used. Finally, no adjustments for institutions, insiders, or short sellers are made to the float.

5 For all figures involving estimated damages, nine settlements are excluded for lack of available stock price data, and the WorldCom settlement is excluded because most of the settlements in the case relate to liability associated with bond offerings (and our research does not compute damages related to securities other than common stock).

6 DDL information is presented in Figure 7 to provide a benchmark for the convenience of readers, since the measure is simple to compute and does not require application of a trading model.

7 For example, see "Study: SOX Helps Cut Restatements," *Compliance Week*, March 2007.

8 Hranaiova, Jana and Byers, Steven L., "Changes in Market Responses to Financial Statement Restatement Announcements in the Sarbanes-Oxley Era," October 9, 2007.

9 There are 37 cases with only Section 11 and/or Section 12(a)(2) claims and no Rule 10b-5 claims in our sample.

10 The median settlement as a percentage of estimated damages for cases with only Section 11 and/or 12(a)(2) claims is higher in 2008 than for prior year settlements. For settlements approved in 2008 there were three settlements for cases with claims limited to Section 11 and/or Section 12(a)(2). The median settlement for these cases was $3.6 million and the median settlement as a percentage of estimated damages was 13.2%.

11 Data for 2006 and 2007 are presented in prior reports.

12 Derivative cases are often resolved with changes to the issuer's corporate governance practices and little or no cash payment; this continues to be true despite the increase in corporate controls introduced after the passage of SOX. For purposes of this report, a derivative action—generally a case filed against officers and directors on behalf of the issuer corporation—must have allegations similar to the class action in nature and time period to be considered an accompanying action.

13 In 2004 the firm split into Milberg Weiss Bershad & Schulman (the firm has since changed its name to Milberg) and Lerach Coughlin Stoia & Robbins (since changed to Coughlin Stoia Geller Rudman & Robbins).

14 Our settlement database includes publicly available and measurable information about settled cases. Non-public or non-measurable factors such as case merits or the limits of available insurance are not reflected in the model to the extent that such factors are not correlated with the variables that are accessible to us (that is, publicly available and measurable factors).

15 Due to the presence of extreme observations in the data, logarithmic transformations are applied to settlement amounts, estimated damages, DDL, the defendant's total assets, and the number of docket entries.

ABOUT THE AUTHORS

Ellen M. Ryan
M.B.A. in International Management,
American Graduate School of International Management
B.A., Saint Mary's College

Ellen Ryan is a manager in the securities practice in Cornerstone Research's Boston office. She has consulted on economic and financial issues in a wide variety of cases including securities class action lawsuits, financial institution breach-of-contract matters, and antitrust litigation. Ms. Ryan also has supported testifying witnesses in corporate governance and breach-of-fiduciary duty matters. Prior to joining Cornerstone Research, Ms. Ryan worked for Salomon Brothers in New York and Tokyo. Currently Ms. Ryan focuses on post–Reform Act settlement research as well as general practice area business and research.

Laura E. Simmons
Ph.D., University of North Carolina at Chapel Hill
M.B.A., University of Houston
B.B.A., University of Texas at Austin

Laura Simmons is an assistant professor in the Mason School of Business at the College of William & Mary and a senior advisor at Cornerstone Research. She is a certified public accountant and has over 17 years of experience in accounting practice and economics consulting. Her economics consulting experience has focused on damage and liability issues in securities litigation, as well as accounting issues arising in a variety of complex commercial litigation matters. She has served as a testifying expert in cases involving accounting analyses, securities case damages, and research on securities lawsuits.

Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. Dr. Simmons was a consultant at Cornerstone Research for over ten years, most recently as a principal. From 1986 to 1991, she was an accountant with Price Waterhouse.

Boston
617.927.3000

Los Angeles
213.553.2500

Menlo Park
650.853.1660

New York
212.605.5000

San Francisco
415.229.8100

Washington
202.912.8900

www.cornerstone.com
securities.cornerstone.com