UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re INTERCEPT PHARMACEUTICALS, INC. SECURITIES LITIGATION	Civil Action No. 1:14-cv-01123-NRB
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	DECLARATION OF TOR GRONBORG IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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1. I, TOR GRONBORG, am an attorney duly licensed to practice before all of the courts of the State of California, and I have been admitted in this case *pro hac vice*. I am a member of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), and counsel for lead plaintiff George Burton and original plaintiff Scot H. Atwood (collectively, "Plaintiffs") and the Class. I have been actively involved in the prosecution and resolution of this action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my active supervision and participation in all material aspects of the above-captioned Litigation.

2. I submit this declaration in support of Plaintiffs' motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of: (a) the Stipulation of Settlement dated as of May 2, 2016 ("Stipulation" or "Settlement"),[1] which provides for a cash settlement of $55,000,000 (the "Settlement Amount"); (b) the proposed Plan of Allocation; (c) Lead Counsel's application for an award of attorneys' fees and expenses; and (d) Plaintiffs' application for an award for time incurred in prosecuting the Litigation.

I. PRELIMINARY STATEMENT

3. This case has been zealously litigated from its commencement in February 2014 through settlement. At every stage of the Litigation, Defendants[2] aggressively litigated the matter and asserted that they had comprehensive defenses. The Settlement was achieved at mediation only after Lead Counsel, *inter alia*: (a) obtained key evidence through requests made pursuant to the Freedom of Information Act ("FOIA"); (b) successfully opposed Defendants' motion to dismiss; (c) fully briefed and argued Plaintiffs' motion for class certification, which remained pending at the

[1] Capitalized terms not otherwise defined in this declaration have the same meaning set forth in the Stipulation.

[2] The Defendants are Intercept Pharmaceuticals, Inc. ("Intercept" or the "Company"), Dr. Mark Pruzanski, and Dr. David Shapiro.

time of the Settlement; (d) conducted extensive discovery, including the review and analysis of over 1.5 million pages of documents produced by Defendants and dozens of third parties; (e) deposed 10 fact and expert witnesses; and (f) responded to discovery propounded by Defendants, consisting of document requests and interrogatories.

4. This Settlement is the product of hard-fought litigation and takes into consideration the significant risks specific to the case. Furthermore, the Settlement is the result of arm's-length negotiations between the parties facilitated by John Van Winkle, a nationally-recognized mediator of complex cases and class actions. These negotiations were conducted by experienced counsel with a full understanding of both the strengths and weaknesses of their respective cases.

5. Plaintiffs believe that this Settlement is a historically good result. The substantial discovery, motion practice, and trial preparation outlined herein informed Plaintiffs that, while their case had strengths, it also had weaknesses, which were conscientiously evaluated in determining what course of action was in the best interest of the Class. As set forth below, despite the fact that many of Plaintiffs' allegations were supported by documentary evidence as well as deposition testimony, there remained numerous uncertainties in the case.

6. The gravamen of the Consolidated Complaint for Violations of the Federal Securities Laws is that, in violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, the Defendants issued false and misleading statements regarding the FLINT trial, a clinical trial testing the effectiveness and safety of the drug obeticholic acid ("OCA"), as a treatment for nonalcoholic steatohepatitis ("NASH"). The FLINT trial was being conducted by the National Institute of Diabetes and Digestive and Kidney Diseases ("NIDDK") pursuant to a cooperative research and development agreement with Intercept.

7. On January 6, 2014, the NIDDK informed Intercept that the treatment phase of the FLINT trial was being stopped because the drug had demonstrated efficacy, and also because of a finding of significant lipid abnormalities (increased total cholesterol, increased LDL cholesterol, and decreased HDL cholesterol) in patients on OCA compared to those on placebo. Defendants proceeded to inform the public about the finding of efficacy on January 9, 2014, but failed to disclose the finding of significant lipid abnormalities. Plaintiffs alleged that Defendants' statements concerning the halting of the FLINT trial were false and misleading and caused Intercept's stock price to be artificially inflated on January 9 and January 10, 2014.

8. The truth about the FLINT trial began to emerge after the market close on January 10, 2014, when the NIDDK issued a public statement reporting the finding of lipid abnormalities. Additional details concerning Defendants' knowledge of the lipid issue prior to their January 9, 2014 statements later emerged in news and analyst reports in May 2014. As a result of these disclosures, Plaintiffs alleged that the price of Intercept's common stock dropped, significantly harming the holders of the Company's securities. A more detailed description of the allegations is set forth in the operative complaint. Dkt. No. 26.

9. In opting to settle the Litigation, Plaintiffs and their counsel considered the risks associated with proving the claims alleged in the complaint. For example, it was Defendants' position that their alleged misstatements concerning the halting of the treatment phase of the FLINT trial were not materially misleading and not made with scienter. Although Plaintiffs dispute Defendants' assertions, based on the document discovery and depositions taken, it was clear that Defendants would offer both evidence and legal arguments to bolster their defenses for summary judgment and trial.

10. The parties also disputed the related issues of loss causation and damages. Defendants would have asserted a "truth-on-the-market" defense that the association between OCA and lipid abnormalities was already known to the market and argued that factors unrelated to the alleged fraud caused the price of Intercept common stock to decline. While Plaintiffs would have disputed these contentions, there was a substantial risk of recovering limited or no damages if the jury agreed in whole or in part with Defendants' arguments.

11. In deciding to settle the Litigation, Plaintiffs and their counsel weighed the witness testimony and documents they believed supported the allegations against the testimony of other witnesses and documents that could be used to undercut those allegations. Indeed, the parties disagreed on the importance of much of the witness testimony and evidence, and there is no way to predict which interpretations and inferences a jury would accept.

12. On balance, considering all the circumstances and risks both sides faced were the parties to continue to trial, both Plaintiffs (for themselves and the Class) and Defendants concluded that settlement on the terms agreed upon was in their respective best interests.

13. Lead Counsel has prosecuted the Litigation on a wholly contingent basis and has advanced or incurred substantial litigation expenses. In doing so, Lead Counsel shouldered the substantial risk of an unfavorable result. Lead Counsel has not yet received any compensation for its effort.

14. The fee application for 28.63% of the Settlement Amount is fair and within the range of fee percentages frequently awarded in this type of action. Indeed, the fee request here was approved by the Plaintiffs and is consistent with the average (median) fees and expenses awarded in cases settling between $25 million and $100 million. *See* Svetlana Starykh & Stefan Boettrich, *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review*, at 36, Figure 32 (NERA

Jan. 25, 2016), attached as Exhibit A. Under the particular facts of this case, this percentage is justified in light of the substantial benefits conferred on the Class, the risks undertaken, the quality of representation, and the nature and extent of legal services performed.

15. Lead Counsel also seeks an award for expenses totaling $421,898.62 that were reasonably and necessarily committed to the prosecution of the Litigation. These expenses include: (a) the fees and expenses of consultants and experts whose services Lead Counsel required in the successful prosecution and resolution of this case; (b) the costs associated with conducting fact and expert witness depositions, which included court reporter and videographer fees as well as travel expenses; (c) photocopying, imaging, shipping, and managing a database of more than 1.5 million pages of documents; and (d) online factual and legal research. These expenses were reasonable and necessary to obtain the successful result.

16. In addition, as permitted under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Plaintiffs Burton and Atwood seek an award of $5,275 and $7,401.25, respectively, for their time incurred in representing the Class. Their investment of time and effort greatly contributed to the successful resolution of the Litigation.

17. The following is a summary of the principal events which occurred during the course of the Litigation and the legal services provided by Plaintiffs' counsel.

II. THE LITIGATION

A. The Commencement of the Action

18. On February 21, 2014, Robbins Geller and Johnson & Weaver, LLP, on behalf of Scot H. Atwood, filed the first class action complaint against the Defendants alleging violations of the Exchange Act. Dkt. No. 1. On February 24, 2014, George Burton filed a related class action

complaint against the Defendants alleging the same factual and legal issues. *See Burton v. Intercept Pharmaceuticals, Inc., et al.*, No. 14-cv-1373 (S.D.N.Y.).

19. On April 22, 2014, Mr. Burton moved the Court for consolidation of the two related actions, for appointment as lead plaintiff, and for Robbins Geller to be appointed as lead counsel. Dkt. Nos. 12-14. On that same date, another Intercept shareholder, Lee Mui Leng, made a similar motion requesting that the Court appoint her as lead plaintiff and approve her selection of lead counsel. Dkt. Nos. 9-11.

20. Mr. Burton, through Robbins Geller, opposed Ms. Leng's motion on May 9, 2014. Dkt. No. 16. Shortly thereafter, on May 12, 2014, Ms. Leng withdrew her motion, conceding that Mr. Burton had a larger financial stake in the Litigation. Dkt. No. 17. No other person or entity moved to be appointed lead plaintiff and no other counsel sought to serve as lead counsel for the proposed class of Intercept investors. Accordingly, on May 16, 2014, the Court consolidated the related actions, appointed Mr. Burton to serve as lead plaintiff and approved his choice of Robbins Geller as lead counsel. Dkt. No. 18.

B. Lead Counsel's Investigation and Consolidated Complaint

21. Prior to and following the filing of the initial complaint, Lead Counsel directed an extensive investigation of the alleged securities law violations. This investigation included, but was not limited to, a review and analysis of: (i) Intercept's public filings with the Securities and Exchange Commission ("SEC"); (ii) transcripts of Intercept's public conference calls; (iii) Intercept's press releases; (iv) reports of securities analysts following Intercept; (v) independent media reports regarding Intercept and the NIDDK; (vi) publicly filed information concerning OCA and the FLINT trial; (vii) economic analyses of Intercept's stock price movement and pricing and

volume data; (viii) consultation with pharmaceutical and medical experts; and (ix) other publicly available material and data.

22. As part of Lead Counsel's investigation of the case, the firm made a FOIA request of the National Institutes of Health ("NIH") in February 2014. The request sought communications with Intercept concerning the FLINT trial. Subsequently, the NIH confirmed that it had responsive documents and produced several key documents reflecting communications between Defendants and representatives of the NIDDK concerning the FLINT trial. [3]

23. Based on this investigation, and relying extensively on the documents obtained through its FOIA request, Lead Counsel prepared a detailed Consolidated Complaint for Violations of the Federal Securities Laws ("Consolidated Complaint") on behalf of Intercept investors who purchased or otherwise acquired the common stock of Intercept during January 9 and January 10, 2014, inclusive, and were damaged thereby. The Consolidated Complaint was filed on June 27, 2014 and brought claims pursuant to §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Dkt. No. 26.

C. Defendants' Motion to Dismiss the Consolidated Complaint

24. On August 14, 2014, Defendants moved to dismiss the Consolidated Complaint. Dkt. Nos. 29-32. In accordance with the PSLRA, formal discovery in the case was stayed until the Court ruled on the motion to dismiss. In support of their motion to dismiss, Defendants argued that the Consolidated Complaint did not give rise to a strong inference of either motive and opportunity or knowledge or recklessness sufficient to plead an intent to commit fraud and, thus, did not adequately plead the element of scienter. Specifically, Defendants argued that their decision not to disclose the NIDDK's finding of significant lipid abnormalities in the FLINT trial was made in good faith and

[3] The NIDDK is one of the institutes that comprise the NIH.

reasonably based upon Defendants' belief that: (i) the NIDDK had approved Intercept's decision not to disclose the finding of lipid abnormalities in the FLINT trial; (ii) Defendants did not possess sufficient data concerning the finding of lipid abnormalities in the FLINT trial at the time of the relevant disclosures to comment; and (iii) OCA's association with lipid abnormalities was already publically known. Defendants also argued that the Consolidated Complaint failed to state a control person claim under §20(a) of the Exchange Act.

25. On September 22, 2014, Mr. Burton filed his opposition to Defendants' motion to dismiss. Dkt. Nos. 35-36. In the opposition, Mr. Burton rebutted Defendants' argument that the Consolidated Complaint failed to adequately plead a strong inference of scienter, and argued that the Consolidated Complaint: (i) alleged Defendants failed to disclose highly material information and made materially false and misleading statements; (ii) alleged a strong, cogent, and compelling inference of scienter based on Defendants' knowledge of the facts that rendered their statements false and misleading and based on Defendants' motive and opportunity to commit fraud; and (iii) properly alleged a §20(a) control person claim. Mr. Burton also argued that various factual arguments made by Defendants, such as that the NIDDK approved Intercept's decision not to disclose the finding of significant lipid abnormalities and that OCA's association with lipid abnormalities like those observed in the FLINT trial were known to the public, were not credible, and not appropriate on a motion to dismiss. Lead Counsel spent significant time and resources performing the legal and factual research necessary to address Defendants' arguments and draft an effective opposition that demonstrated the Consolidated Complaint satisfied the strict pleading burden imposed by the PSLRA.

26. On October 13, 2014, Defendants filed a reply brief in support of their motion to dismiss the Consolidated Complaint. Dkt. No. 37. Oral argument on Defendants' motion to dismiss was then held on February 23, 2015.

27. On March 4, 2015, the Court denied Defendants' motion to dismiss, holding that Defendants chose "only to report the positive development" concerning the FLINT trial and engaged "in the sort of selective disclosure that creates a real possibility of misleading investors." Dkt. No. 38 at 17. Following the March 4, 2015 Order, the parties began to meet and confer regarding case management, pre-trial scheduling, and fact discovery. After engaging in negotiations, the parties filed a proposed pre-trial schedule and case management statement, which the Court entered on March 25, 2015. Dkt. No. 44.

28. Defendants filed their Answer to the Consolidated Complaint on April 13, 2015, denying all of Mr. Burton's substantive allegations and asserting 12 separate affirmative defenses. Dkt. No. 45.

D. Plaintiffs' Motion for Class Certification

29. Plaintiffs moved for class certification on July 15, 2015. Mr. Burton and Mr. Atwood requested that the Court appoint them as class representatives based on their work prosecuting the claims of securities fraud and combined purchases of 1,085 shares of Intercept common stock during the Class Period, and that Robbins Geller be appointed as class counsel. Dkt. Nos. 63-67. The motion for class certification addressed all of the requirements of Fed. R. Civ. P. 23, as well as *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) ("efficient market") and *Halliburton Co. v. Erica P. John Fund, Inc.*, _U.S._, 134 S. Ct. 2398, 2408 (2014) (upholding the "fraud-on-the-market" presumption of reliance).

30. In support of their motion, Plaintiffs retained Dr. Steven P. Feinstein to conduct an event study of publicly available information about Intercept and to opine on the efficiency of the market for Intercept's stock. Dkt. No. 66. Based on his findings, Dr. Feinstein concluded that Intercept's common stock traded in an efficient market during the Class Period. Lead Counsel spent substantial time consulting with Dr. Feinstein on his declaration and the class certification briefing.

31. On September 14, 2015, Defendants opposed Plaintiffs' motion, claiming that Plaintiffs had not satisfied their burden under Rule 23 of showing questions common to the class predominated because Dr. Feinstein's declaration was insufficient to demonstrate that the market for Intercept's common stock was efficient. Dkt. Nos. 72-74. In support of their opposition, Defendants relied upon an expert report from economist Dr. Paul A. Gompers. Dkt. Nos. 72, 73-1. Dr. Gompers opined that Dr. Feinstein had not established that Intercept's stock traded in an efficient market during the Class Period due to purported deficiencies in Dr. Feinstein's methodology and, moreover, that the market for Intercept stock behaved inefficiently.

32. On September 18, 2015, prior to Plaintiffs filing their reply memorandum in support of their motion for class certification, Defendants filed a letter motion requesting that they be granted leave to file a sur-reply in opposition to Plaintiffs' pending class certification motion for the purposes of responding to an anticipated rebuttal declaration by Dr. Feinstein, or that, in the alternative, a protective order be entered barring the submission of any further expert report. Dkt. No. 76. Plaintiffs responded on September 21, 2015 and argued Defendants' request was premature and lacked any legal or factual basis. Dkt. No. 78. A telephonic hearing was held on September 24, 2015, and the Court denied Defendants' letter motion.

33. On October 2, 2015, Lead Counsel deposed Dr. Gompers in Boston, Massachusetts for the purposes of responding to arguments raised in Defendants' class certification opposition.

34. On October 14, 2015, Plaintiffs filed their reply memorandum in support of their motion for class certification and argued that they had met their burden under Rule 23 by establishing market efficiency and satisfying the predominance requirement of Rule 23(b)(3). Dkt. No. 80. Plaintiffs submitted a rebuttal declaration by Dr. Feinstein in connection with the reply. Dkt. No. 81. Dr. Feinstein refuted the arguments and conclusions of Defendants' expert and reiterated that the market for Intercept common stock during the Class Period was efficient. Lead Counsel spent additional time consulting with Dr. Feinstein on his rebuttal declaration and Plaintiffs' class certification reply briefing.

35. On October 21, 2015, Defendants renewed their request for a sur-reply and for leave to file an additional expert witness report by Dr. Gompers. Dkt. No. 82. Plaintiffs opposed Defendants' letter motion on October 22, 2015 on the grounds the class certification reply memorandum and accompanying rebuttal report of Dr. Feinstein raised no new argument or issue warranting a sur-reply or additional expert report. Dkt. No. 83. On October 26, 2015, the Court granted Defendants' request for leave to file a short sur-reply and expert affidavit, Dkt. No. 84, which Defendants filed on November 10, 2015. Dkt. Nos. 85-86.

36. Oral argument on Plaintiffs' motion for class certification was heard on January 20, 2016.

37. Prior to the Court rendering a decision on class certification, the parties reached a settlement agreement, which was filed with the Court on May 5, 2016. Dkt. No. 113. On May 23, 2016, as part of its preliminary approval of the Settlement, the Court certified, for settlement purposes only, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, a Class defined as follows:

> All persons and entities who purchased or otherwise acquired the common stock of Intercept Pharmaceuticals, Inc. during January 9, 2014 and January 10, 2014,

> inclusive, and were damaged thereby. Excluded from the Class are Defendants, present or former executive officers of Intercept, and their immediate families. Also excluded are those persons who validly exclude themselves from the Class pursuant to the Notice of Pendency of Class Action and Proposed Settlement.

Dkt. No. 118.

E. Fact Discovery

38. Lead Counsel immediately began fact discovery following the March 4, 2015 Order denying Defendants' motion to dismiss. Throughout the class certification briefing, and until the parties reached agreement to settle the Litigation, Plaintiffs engaged in rigorous fact discovery. During that time, Lead Counsel obtained, reviewed, and analyzed more than 1.5 million pages of documents from Defendants and dozens of non-parties, and deposed numerous fact witnesses in multiple states.

1. Protective Order

39. To protect against the disclosure of potentially sensitive personal or proprietary records, Lead Counsel drafted a comprehensive protective order to govern the treatment of confidential evidence produced in this case and negotiated with Defendants' counsel over the terms of the proposed order. The parties also negotiated the extent to which, and the conditions under which, confidential information could be shown to deponents, non-parties, and others not previously privy to such information. The parties were able to reach agreement on all of their respective areas of concern and filed a Joint Stipulation and proposed Protective Order. On March 25, 2015, the Court entered the Protective Order. Dkt. No. 43.

2. Written Discovery Directed to Defendants

a. Document Requests

40. Following the parties' Fed. R. Civ. P. 26 conference, the First Request to All Defendants for Production of Documents was served on March 19, 2015, consisting of 36 discrete

requests germane to the claims and defenses asserted by the parties. Plaintiffs propounded their Second Request to All Defendants for Production of Documents on November 30, 2015, consisting of one additional request related to Intercept's Chief Strategy Officer, Rachel McMinn. In their responses, Defendants objected to nearly every request for production on the grounds of relevance, over breadth, ambiguity, and/or seeking privileged information.

41. Lead Counsel engaged in numerous meet and confer discussions with Defendants' counsel to address their objections to the First Request to All Defendants for Production of Documents. The result of the meet and confer discussions, which continued over several months, was a June 2015, single-spaced, 13-page Joint Memorandum Memorializing the Parties' Meet and Confer Discussions. As a result of these efforts, the parties were able to resolve the majority of their disputes and narrow the scope of those remaining disputes that required resolution by the Court.

b. Negotiations Concerning the Production of Defendants' Electronically Stored Information ("ESI")

42. Multiple additional meet and confer discussions were also necessary to address the identification and production of relevant ESI. Virtually all of the relevant materials were maintained electronically, making these discussions particularly important to the prosecution of this case. Lead Counsel, based on consultation with in-house ESI experts, posed detailed questions to Defendants concerning Intercept's information technology systems, focused on the general electronic systems maintained by and for Intercept and the location of potentially responsive ESI. Lead Counsel diligently pursued this information for months and engaged in numerous conferences with Defendants regarding the specific information sought.

43. The focus of these discussions included: custodial and non-custodial sources of ESI; search terms and date ranges to be used in identifying relevant ESI; ESI retention and deletion policies and practices; file server and document management systems and policies; the use of backup

tapes or systems; retention of instant messages and text messages; the initiation of a litigation hold; and the volume of data by custodian, date and file type. These discussions further expanded when relevant ESI was found contained in certain witnesses' personal email accounts.

44. Lead Counsel initiated and participated in written and telephonic exchanges with Defendants' counsel regarding the use of de-duplication, file type filtering, date filtering, and review by thread-view as potential methods to efficiently search, review, and produce the documents from agreed upon custodians. In response to Defendants' concerns regarding the burden of review for privilege, Lead Counsel provided suggestions as to how to further reduce Defendants' burden, including the use of search terms.

45. The parties worked cooperatively to reach agreement on search terms, which required numerous meet and confer discussions and negotiations spanning over a series of months. This process involved running and testing various alternatives to Plaintiffs' and Defendants' proposed searches in an effort to reach a mutually agreeable set of search terms. At each step, Lead Counsel utilized the services of in-house e-discovery experts and researched the capabilities of the vendor Defendants had retained to manage the production of ESI.

46. In order to keep discovery progressing while they continued to engage in meet and confer discussions, the parties agreed to proceed with a rolling production of Defendants' documents from the critical January to May 2014 time period. Additional document productions from outside that time period followed, allowing Lead Counsel to receive and review these materials as quickly and efficiently as possible. However, given the volume of the documents, the fact discovery deadline was extended to allow Defendants additional time to complete their productions and for Plaintiffs' counsel to review and analyze these productions before commencing with depositions. *See* Dkt. Nos. 79, 96 (amended scheduling orders).

c. Interrogatories

47. Plaintiffs served multiple sets of interrogatories on the Defendants during the Litigation to aid in the identification of relevant documents and witnesses and to garner evidence in support of their claims. The First Set of Interrogatories to All Defendants was served on May 18, 2015, consisting of five discrete requests concerning Defendants' affirmative defenses. Plaintiffs propounded their Second Set of Interrogatories to All Defendants on July 27, 2015, consisting of four additional requests, concerning Defendants' review and approval of the relevant Intercept press release and conference call transcript that contained certain alleged false and misleading statements. Plaintiffs propounded their Third Set of Interrogatories to All Defendants on February 24, 2016, consisting of 10 additional requests, also concerning Defendants' affirmative defenses. Each set of interrogatories required further meet and confer discussions concerning Defendants' responses and objections.

d. Requests for Admission

48. Plaintiffs served two sets of requests for admission on the Defendants to narrow the scope of evidentiary issues in dispute. The First Set of Requests for Admission to All Defendants was served on May 18, 2015, consisting of 12 discrete requests concerning the market efficiency of Intercept's stock. Plaintiffs then propounded their First Set of Requests for Admission to Defendant Mark Pruzanski on July 27, 2015, consisting of eight discrete requests concerning whether Dr. Pruzanski made certain statements regarding the FLINT trial to reporters for *The Wall Street Journal*. The parties met and conferred following Plaintiffs' receipt of Defendants' responses and objections to these requests.

3. Discovery Disputes with Defendants

49. Lead Counsel devoted substantial time to analyzing documents produced in discovery, preparing for meet and confer conferences with counsel for Defendants, conducting meet and confer conferences, and preparing correspondence memorializing those conversations in order to narrow the scope of discovery disputes while still aggressively pursuing the discovery rights of the Class. While the parties were able to resolve the vast majority of their differences, the following disputes were not able to be resolved without the Court's attention.

a. Disputes Over Scope of Production

50. Mr. Burton filed a letter motion on June 15, 2015 seeking the Court's assistance to resolve a dispute regarding documents pertaining to: (i) the potential or expected revenue and earnings from Intercept's sale of OCA if the drug were to be approved for marketing by the FDA; and (ii) insider trading and stock offerings evidencing Defendants' motive and opportunity to commit the alleged fraud. Dkt. No. 52. Defendants responded on June 23, 2015, Dkt. No. 55, and Lead Plaintiff filed a reply letter on June 24, 2015 to address a contemplated request for a protective order raised by Defendants in their June 23 letter to block certain third party discovery. Dkt. No. 57. Defendants responded to the reply letter on June 29, 2015. Dkt. No. 59.

51. The Court held a telephonic conference on July 2, 2015. Based on arguments made during the telephonic conference, the Court invited the parties to submit additional evidence or argument concerning allegations that Defendants had initiated a campaign to cover-up their conduct and blunt the impact of the NIDDK's lipid disclosure on Intercept's stock price by encouraging investment banks to issue positive analyst reports in exchange for work on a forthcoming stock offering. Mr. Burton submitted a follow-up letter on July 6, 2015 with additional evidence, and on July 14, 2015, Defendants responded. Dkt. Nos. 61-62. On July 23, 2015, the Court granted

Mr. Burton's request, in part, and allowed for discovery of internal Intercept communications regarding the selection of investment banks for the Company's April 2014 offering. Dkt. No. 68.

52. On January 13, 2016, Plaintiffs requested the Court's assistance to resolve a dispute regarding the production of documents from Defendants concerning the hiring of Bank of America analyst Rachel McMinn, a percipient witness, by Intercept as the Company's Chief Strategy Officer. Dkt. No. 90. Defendants opposed the production of such documents in a January 21, 2016 letter. Dkt. No. 97. On January 22, 2016, the Court initially decided these documents were outside the scope of the discovery parameters set by the Court. Dkt. No. 99. However, Plaintiffs requested that the Court reconsider its decision in a January 25, 2016 letter on the basis that such documents were relevant to Dr. McMinn's bias. Dkt. No. 101. The Court held a telephonic conference on January 26, 2016 and partially granted Plaintiffs' request for reconsideration, requiring Defendants to identify their first contact with Dr. McMinn regarding her hiring by Intercept.

b. Disputes Over Defendants' Privilege Claims

53. During discovery, Defendants provided Plaintiffs with multiple privilege logs consisting of over three thousand entries in total. After careful review of all of the entries on the privilege logs, as well as hundreds of documents that had been produced, but partially redacted, Plaintiffs identified multiple categories of documents that appeared to have been improperly withheld from production or redacted. This review included the utilization of information contained on the privilege logs to identify withheld email chains that did not include attorney communications, as well as cross-checking communications produced by Defendants and third parties to identify those communications that were inconsistently and improperly redacted or withheld. After unsuccessful meet and confer negotiations with Defendants regarding the categories of documents Plaintiffs believed were improperly being withheld, Plaintiffs raised this dispute with the Court.

54. On January 13, 2016, Plaintiffs filed a letter motion arguing multiple categories of documents were being improperly withheld by Defendants. These categories of documents included drafts of Intercept press releases, documents and communications disclosed to third-party public relations firms, and email communications that did not appear to be related to the provision of legal advice. Dkt. No. 91. The Defendants responded on January 22, 2016, and Plaintiffs filed a reply letter on January 25, 2016. Dkt. Nos. 98, 100. The Court held a telephonic conference on January 26, 2016 and decided, among other things, that certain documents produced to the third party public relations firms should be produced. The Court also invited Plaintiffs to submit a list of allegedly improperly redacted and withheld documents for the Court's *in camera* review. Plaintiffs submitted that list to Defendants on February 12, 2016, so that they could provide the Court with the redacted or withheld documents in dispute. The settlement agreement was reached before the Court further ruled on this issue.

55. On February 25, 2016, Plaintiffs filed a letter motion to move to compel the production of draft minutes of a January 2014 meeting held between Intercept and the NIDDK, arguing the draft minutes were non-privileged business records or that, in the alternative, the minutes were not protected from production under the crime-fraud exception. Dkt. No. 104. Defendants filed a letter in response on March 3, 2016. Dkt. No. 107. Again, the settlement agreement was reached before the Court ruled on this issue.

56. On March 2, 2016, Defendants filed a letter motion to move for a protective order precluding the further use of certain documents produced by third-party public relations firm Makovsky & Co., Inc., arguing the documents constituted work product. Dkt. No. 106. Plaintiffs responded in opposition on March 7, 2016, arguing that the documents were not work product

protected and that any potential work product protection had been waived. Dkt. No. 108. The settlement agreement was reached before a decision was rendered by the Court.

4. Written Discovery Directed Toward Third Parties

57. A significant amount of relevant information in this Litigation was in the possession, custody, or control of third parties. As with Defendants' production, Lead Counsel, along with Plaintiffs' additional counsel at Pomerantz LLP and Johnson & Weaver, LLP, expended significant time and resources negotiating the scope of the document requests with third parties, addressing any objections to the requests by the third parties, arranging for the production of responsive documents, and reviewing, organizing, and analyzing the documents.

58. As previously discussed, Lead Counsel submitted a FOIA request to the NIH on February 21, 2014 and subsequently received information supporting Plaintiffs' claims. A FOIA request was also submitted to the SEC on May 27, 2015, concerning Intercept's disclosures surrounding the halting of the treatment phase of the FLINT trial, and a request for documents was made to the European Medicines Agency concerning OCA for the treatment of NASH on March 12, 2015.

59. Following the Court's March 4, 2015 Order denying Defendants' motion to dismiss, Lead Counsel served subpoenas on 46 third parties. The third parties subpoenaed by Plaintiffs in this action are set forth below:

Person/Entity	Date	Relationship to Litigation
BMO Capital Markets Corp.	3/17/2015	Investment bankers and/or securities analyst for Intercept
Citigroup Global Markets Inc.	3/17/2015	Investment bankers and/or securities analyst for Intercept
Deutsche Bank Securities Inc.	3/17/2015	Investment bankers and/or securities analyst for Intercept
Needham & Company, LLC	3/17/2015	Investment bankers and/or securities analyst for Intercept

Person/Entity	Date	Relationship to Litigation
Oppenheimer and Co., Inc.	3/17/2015	Investment bankers and/or securities analyst for Intercept
Point72 Asset Management, LP	3/17/2015	Intercept investor – conducted market research on Intercept
Janney Montgomery Scott LLC	3/17/2015	Investment bankers and/or securities analyst for Intercept
JMP Securities, LLC	3/17/2015	Investment bankers and/or securities analyst for Intercept
Wedbush Securities, Inc.	3/17/2015	Investment bankers and/or securities analyst for Intercept
U.S. Food and Drug Administration	3/17/2015	Federal regulatory agency
NIDDK	4/9/2015	Government agency – conducted FLINT trial
Goldman, Sachs & Co.	4/16/2015	Investment bankers and/or securities analyst for Intercept
Merrill Lynch, Peirce, Fenner & Smith Inc.	4/20/2015	Investment bankers and/or securities analyst for Intercept
Summer Street Research Partners	4/21/2015	Investment bankers and/or securities analyst for Intercept
The Massachusetts Medical Society	4/23/2015	Publisher of New England Journal of Medicine – declined to publish FLINT trial
Lazar Partners Ltd.	4/27/2015	Provided public relations services to Intercept
AT&T Mobility, LLC	5/29/2015	Custodian of Intercept telephone records
Broadview Networks, Inc.	5/29/2015	Custodian of Intercept telephone records
Level 3 Communications, LLC	5/29/2015	Custodian of Intercept telephone records
T-Mobile US, Inc.	5/29/2015	Custodian of Intercept telephone records
Verizon Wireless Services, LLC	5/29/2015	Custodian of Intercept telephone records
Windstream Services, LLC	5/29/2015	Custodian of Intercept telephone records
M5 Networks, LLC	6/10/2015	Custodian of Intercept telephone records
FMR LLC	6/11/2015	Intercept investor – conducted market research on Intercept
Gilead Sciences, Inc.	6/11/2015	Pharmaceuticals company – rumored to have considered buying Intercept
JPMorgan Chase & Co.	6/16/2015	Host of healthcare conference at which Intercept presented
Makovsky & Co., Inc.	7/17/2015	Provided public relations services to Intercept
Arun Sanyal	7/17/2015	Professor of Hepatology, Virginia Commonwealth University – NASH researcher and FLINT trial co-author
Sidley Austin LLP	10/23/2015	Regulatory counsel for Intercept

Person/Entity	Date	Relationship to Litigation
Chantal Beaudry	12/18/2015	Public relations executive, Lazar Partners Ltd.
Jim Birchenough	12/18/2015	Analyst, BMO Capital Markets Corp.
Akiva Felt	12/18/2015	Analyst, Oppenheimer & Co., Inc.
James Molloy	12/18/2015	Analyst, Janney Montgomery Scott LLC
Arun Master	12/18/2015	Investment banker, Oppenheimer & Co., Inc.
Liana Moussatos	12/18/2015	Analyst, Wedbush Securities, Inc.
Timothy Morgan	12/21/2015	Professor of Medicine, University of California, Irvine - NASH researcher and member of Intercept's Data Safety and Monitoring Committee
Senthil Sundaram	12/22/2015	Senior Director, Corporate Development, Intercept
Rachel McMinn	12/22/2015	Chief Strategy Officer, Intercept/former analyst, Bank of America
Linda Robertson	12/22/2015	Vice President, Regulatory Affairs, Intercept
Jonathan Silverstein	12/22/2015	Chairman of the Board of Directors, Intercept
Roya Hooshmand-Rad	12/22/2015	Senior Director, Clinical Research, Intercept
Bryan Yoon	12/22/2015	Senior Director, Legal Affairs, Intercept
Barbara Duncan	12/22/2015	Chief Financial Officer, Intercept
Jonathan Eckard	12/23/2015	Analyst, Citigroup Global Markets Inc.
Kristie Kuhl	1/19/2016	Public Relations Executive, Makovsky & Co., Inc.
Gray Strategic Advisors	2/23/2016	Consulting firm with ties to Intercept's CFO, Barbara Duncan

60. To expedite the production of documents from the NIDDK and FDA, and to minimize the burden on the agencies and the Defendants, Lead Counsel also negotiated with the Defendants for a release of confidential information concerning Intercept in the possession of the agencies. Lead Counsel engaged in additional negotiations with the NIDDK and Point72 Asset Management, LP to obtain declarations attesting to the authenticity and origin of certain documents in order to establish a foundation for their admissibility and avoid the need for additional depositions. In particular, the declaration of Valery Gheen on behalf of the NIDDK was the result of

over three months of negotiations with both the NIDDK in-house counsel and Department of Justice attorneys.

5. Plaintiffs' Review and Analysis of Discovery Materials

61. As a result of Plaintiffs' document requests to Defendants, subpoena and FOIA requests to third parties, and Lead Counsel's extensive meet and confer discussions with both Defendants and the third parties, Plaintiffs obtained over 1.5 million pages of documents. Careful examination and analysis of these documents, in preparation for deposition and trial, required a considerable effort by Lead Counsel.

62. First, Lead Counsel uploaded these documents on a database to manage the volume of documents produced, requiring Lead Counsel to advance certain costs to establish and maintain the database. Then, Lead Counsel utilized its e-discovery system for, *inter alia*, identifying and tracking the documents most likely to be used in depositions and at trial (whether by Plaintiffs or Defendants), identifying relevant witnesses for deposition or additional discovery requests, and establishing procedures to identify additional documents and information that had not been produced. Using records produced from telephone companies and an investigation regarding the assignees for particular phone numbers, Lead Counsel also created a phone log, consisting of tens of thousands of entries, listing calls and text messages made and received by the Defendants and other Intercept employees during the relevant period. Excerpts of this log were routinely used in depositions during the Litigation.

63. Attorneys and staff reviewed documents and used search terms, date filters, custodian fields, and other metadata to analyze thousands of documents related to key issues in the case. Throughout the document review process, counsel for Plaintiffs analyzed the information contained

in the documents, determined the documents' relevance to the alleged fraud, and located the evidence needed to present the case at trial and rebut Defendants' defenses.

6. Depositions

64. In preparation for trial, Lead Counsel identified 24 individuals and entities whose testimony Plaintiffs wanted for trial and negotiated an extension of the Fed. R. Civ. P. 30(a)(2)(A)(i) deposition limit. *See* Dkt. No. 79. Lead Counsel spent extensive time preparing questions and identifying and analyzing documents to use in its examinations. Prior to the Settlement, Lead Counsel deposed three Intercept executives and the Chairman of Intercept's Board of Directors, as well as Dr. Averell Sherker, a key percipient witness at the NIDDK, and numerous securities analysts and an investment banker that covered Intercept during the Class Period. These depositions took place throughout the country and are set forth as follows:

Deponent	Position	Date	Location
Paul Gompers	Defendants' Economics and Market Efficiency Expert	10/2/2015	Boston, Massachusetts
Averell Sherker	Program Director, NIDDK	12/9/2015	Bethesda, Maryland
Jonathan Eckard	Analyst, Citigroup Global Markets Inc.	1/27/2016	New York, New York
Akiva Felt	Analyst, Oppenheimer & Co., Inc.	1/28/2016	New York, New York
Rachel McMinn	Chief Strategy Officer, Intercept	2/4/2016	New York, New York
Liana Moussatos	Analyst, Wedbush Securities, Inc.	2/4/2016	San Francisco, California
Arun Master	Investment Banker, Oppenheimer & Co., Inc.	2/5/2016	New York, New York
Jonathan Silverstein	Chairman, Intercept Board of Directors	2/9/2016	New York, New York
Barbara Duncan	Chief Financial Officer, Intercept	2/26/2016	New York, New York
Roya Hooshmand-Rad	Senior Director of Clinical Research, Intercept	3/3/2016	San Diego, California

65. In addition, several other critical depositions had been noticed and were scheduled to occur during the final weeks of the fact discovery period, including the depositions of defendants Drs. Pruzanski and Shapiro. At the time the Settlement was reached, attorneys for Lead Counsel had spent significant time preparing for the following depositions:

Deponent	Position	Scheduled Date	Location
Senthil Sundaram	Senior Director, Corporate Development, Intercept	3/16/2016	New York, New York
Timothy Morgan	Professor of Medicine, University of California, Irvine	3/17/2016	Santa Ana, California
Kristie P. Kuhl	Public Relations Executive, Makovsky & Co., Inc.	3/18/2016	New York, New York
Bryan Yoon	Senior Director, Legal Affairs, Intercept	3/18/2016	New York, New York
James Molloy	Analyst, Janney Montgomery Scott LLC	3/23/2016	Boston, Massachusetts
Jim Birchenough	Analyst, BMO Capital Markets Corp.	3/24/2016	San Francisco, California
Mark Pruzanski	Defendant, CEO, Intercept	3/30/2016	New York, New York
David Shapiro	Defendant, CMO, Intercept	3/31/2016	New York, New York
Scot Atwood	Plaintiff	4/18/2016	Springfield, Illinois
George Burton	Plaintiff	4/26/2016	Austin, Texas
Linda Robertson	Vice President, Regulatory Affairs, Intercept	4/27/2016	New York, New York

66. The depositions taken by Lead Counsel were critical in developing evidence regarding Defendants' alleged fraud. Of particular importance was the *de bene esse* deposition of Dr. Sherker, which required Lead Counsel to engage in considerable negotiations over many months with counsel for the NIDDK and NIH to secure.

a. Plaintiffs' Efforts in Obtaining Permission to Depose Dr. Sherker

67. In July 2015, Lead Counsel sent a "*Touhy* letter" to the head of the NIH requesting permission to depose Dr. Sherker, as required pursuant to Dep't of Health and Human Servs., 52 Fed. Reg. 37146 (Oct. 5, 1987) (to be codified at 45 C.F.R. pt. 2). On August 12, 2015, the NIH/NIDDK informed Lead Counsel that it anticipated providing a formal response to the *Touhy* request within 10 days. On August 26, 2015, Lead Counsel requested a status update on the NIH/NIDDK's formal response. Lead Counsel and counsel for the NIH/NIDDK then conferred regarding the status of the formal response, and the NIH/NIDDK requested that Plaintiffs provide an outline of the scope of questioning for Dr. Sherker's proposed deposition. On August 28, 2015, Lead Counsel complied with the agency's request and asked that the NIH/NIDDK approve or deny Dr. Sherker's deposition by August 31, 2015.

68. On September 1, 2015, Lead Counsel again asked for the status of the NIH/NIDDK's formal response. After numerous follow-up communications from Lead Counsel, the NIH/NIDDK's counsel responded on September 7, 2015, stating that the NIH/NIDDK would not agree to Dr. Sherker's deposition unless it was further limited in scope, or conducted pursuant to Fed. R. Civ. P. 31. Because Plaintiffs had already limited the scope of the deposition questioning and because a Rule 31 deposition was not a viable option given that Dr. Sherker could not be compelled to testify at trial in the underlying securities fraud case, on September 8, 2015, Lead Counsel informed the NIH/NIDDK that Plaintiffs intended to move to compel Dr. Sherker's live testimony.

69. After the motion to compel briefing was finalized, Lead Counsel submitted it to the NIDDK and again asked the NIH/NIDDK to reconsider its refusal to provide a date when it would provide a formal, written response to Plaintiffs' *Touhy* request. Finally, after further

communications regarding the motion to compel and the scope of the deposition, the NIH/NIDDK agreed to make Dr. Sherker available for a deposition on December 9, 2015.

b. Plaintiffs' Efforts to Depose *Wall Street Journal* Reporter Peter Loftus

70. On September 15, 2015, following numerous calls with his counsel, Plaintiffs served a deposition subpoena on Peter Loftus, a reporter for *The Wall Street Journal* ("WSJ"). The next day, Mr. Loftus filed a letter motion with this Court seeking to quash the deposition subpoena on the basis of the reporter's privilege. Dkt. No. 75. Plaintiffs sought to depose Mr. Loftus for the narrow purpose of establishing that Dr. Pruzanski made certain statements to Mr. Loftus regarding the unexpected halting of the treatment phase of the FLINT trail. These statements were published in various WSJ articles.

71. Plaintiffs responded to Mr. Loftus' letter motion on September 21, 2015, noting that Mr. Loftus' deposition was necessary given that, in response to Plaintiffs' requests for admission, Dr. Pruzanski would not admit or deny that he used certain language attributed to him in the articles and because Dr. Pruzanski denied having made another statement to the WSJ. Dkt. No. 77.

72. A telephonic hearing was held with the Court on September 24, 2015, at which time it was decided that Plaintiffs could renew their request to depose Mr. Loftus, if necessary, following the deposition of Dr. Pruzanski. The Settlement was then subsequently reached, averting the need for Mr. Loftus' deposition.

7. Plaintiffs' Response to Defendants' Discovery

73. Over the course of the fact discovery period, Plaintiffs responded to multiple discovery requests from the Defendants, including 26 requests for production of documents and 13 interrogatories. Plaintiffs responded and objected to Defendants' discovery and the parties subsequently met and conferred, resolving all potential disputes.

F. Expert Witnesses and Consultants

74. To assist Lead Counsel in investigating and proving Plaintiffs' claims and navigating the complex issues involved in this matter, the services of certain experts and consultants were required. The work performed by these experts and consultants provided valuable insight to Lead Counsel in evaluating prospects for settlement during the course of the Litigation.

1. Dr. Steven P. Feinstein, Ph.D., CFA and Crowninshield Financial Research

75. Dr. Feinstein, founder and President of Crowninshield Financial Research ("CFR"), is an Associate Professor of Finance at Babson College, and has published extensively regarding corporate valuation, derivatives, and investments. Prior to entering academia, Dr. Feinstein was an economist at the Federal Reserve Bank of Atlanta. Dr. Feinstein has provided analysis and testimony in numerous class action securities lawsuits, ERISA cases, the qui tam yield burning cases, derivatives valuations, and complex business litigation. Plaintiffs utilized the services of Dr. Feinstein and CFR to examine and explain how Intercept's stock trades in an efficient market, to conduct a thorough event study examining all industry, market, and Company specific news during the Class Period, and to review and analyze documents related to events surrounding Intercept's announcements on January 9, 2014 regarding the halting of the treatment phase of the FLINT trial. In addition, Dr. Feinstein and the staff at CFR prepared an expert report and rebuttal report on behalf of Plaintiffs at class certification and assisted Lead Counsel in deposing Defendants' expert, Dr. Gompers, and addressing his arguments regarding market efficiency. Dr. Feinstein and CFR also prepared and analyzed multiple damages models used for the purposes of mediation and the construction of the proposed Plan of Allocation.

2. Bjorn Steinholt and Financial Markets Analysis, Inc.

76. Bjorn Steinholt is a designated Chartered Financial Analyst (CFA), holds a Master of International Business degree from the University of San Diego and was a founding principal at Financial Markets Analysis, LLC ("FMA"). FMA is a valuation and economic consulting firm with expertise in identifying and calculating economic damages in conjunction with market statements and disclosures. At and around the time of the filing of the operative complaint, Mr. Steinholt and FMA prepared a media and stock price analysis for purposes of identifying and pleading loss causation and damages. Mr. Steinholt and FMA staff also consulted with counsel regarding the allegations and potential per share damages suffered by the Class.

3. Dr. Nicholas P. Jewell, Ph.D.

77. Dr. Jewell is a Professor of Biostatistics and Statistics at the University of California, Berkeley, and a Fellow of the American Statistical Association, the Institute of Mathematical Statistics, and the American Association for the Advancement of Science. In 1976, he earned his Ph.D. in Mathematics from the University of Edinburgh and between 1977 and 1978 was a Harkness Fellow at Stanford University, Division of Statistics and Biostatistics. In the last four years, Dr. Jewell has provided opinions in numerous cases regarding biostatistics, including in several large and complex securities class actions. His expertise includes statistical methods related to infectious diseases, biostatistical techniques in epidemiological data analysis, survival analysis and stochastic processes, and genomics. During the document review in this case, Dr. Jewell, together with his assistant, Dr. Palko S. Goldman, analyzed documents relating to the FLINT trial. At the time of the Settlement, Dr. Jewell was in the process of preparing his expert report for this Litigation.

78. Lead Counsel also spent considerable time identifying and consulting with experts on clinical trials, NASH, and the diagnosis and treatment of the disease.

III. THE RISKS OF LITIGATION

79. Plaintiffs, by and through Lead Counsel, zealously litigated this case, and the Settlement in this Litigation was reached only after Lead Counsel had a thorough understanding of the strengths and potential weaknesses of the claims alleged in the Consolidated Complaint. At the time of Settlement, nearly all fact discovery was complete. Accordingly, Plaintiffs and Lead Counsel fully understood the strengths of their claims, the strengths of Defendants' defenses, and the potential damages suffered by the Class.

80. Numerous hurdles remained before trial. At the time of the Settlement, Plaintiffs' motion for class certification remained pending. While Plaintiffs strongly believed the Class would be certified, if Plaintiffs were unable to certify a class, the Litigation likely could not be sustained. Then, there was always the risk that if a Class was certified, the Court might not maintain the Litigation, or particular claims, on a class-wide basis through trial.

81. Motions important to Plaintiffs' ability to obtain a verdict in the Class' favor at trial likely would have been filed, including motions that would determine the extent of the evidence that could be presented at trial and the issues upon which liability could be premised. Depending on their outcome, such motions could seriously undermine or altogether preclude Plaintiffs from proving their case.

82. While Plaintiffs firmly believe that the documentary and testimonial evidence they intended to offer at trial fully supports their claims, they also understand that there is no way of predicting which interpretations, inferences, or testimony the jury would have accepted at trial. Defendants have adamantly denied any culpability throughout the Litigation and were prepared to mount defenses that could potentially bar a Class recovery. If the jury sided with Defendants on even one of their defenses, the Class would recover nothing.

A. Falsity

83. Plaintiffs alleged that certain statements by Defendants regarding the halting of the treatment phase of the FLINT trial were false and misleading when made. Defendants, on the other hand, maintained that they accurately disclosed all material information about OCA and the FLINT trial. In particular, Defendants argued that their public statements regarding the halting of the treatment phase of the FLINT trial had been approved by the NIDDK and were otherwise in-line with the NIDDK's official position. Defendants also asserted a "truth-on-the-market" defense, arguing that prior to and throughout the Class Period investors were aware that OCA caused lipid abnormalities like those observed in the FLINT trial based on the results of a prior clinical trial. While the parties disagreed about the merits of these arguments, Plaintiffs recognized that if a jury found them compelling, Plaintiffs would be hard pressed to demonstrate at trial that Defendants' statements were materially false or misleading.

B. Scienter

84. In addition to the risks Plaintiffs faced establishing falsity, Defendants were also prepared to mount a defense asserting that Plaintiffs could not establish that Defendants made any false or misleading statements with the requisite intent. Defendants asserted that they lacked scienter because they reasonably believed the lipid finding did not need to be disclosed. In particular, Defendants claimed that the lipid information was too vague or inconsequential to share, and that, in any case, the public was already aware of OCA's lipid effects and that their statements had been approved by the NIDDK. Were a jury to find these arguments reasonable, it would be difficult for Plaintiffs to prove Defendants acted with fraudulent intent.

85. Defendants were also prepared to argue at trial that Plaintiffs could not demonstrate scienter because there was insufficient evidence of any motive to make false and misleading

statements to the public. Defendants would have argued that because there was no insider trading during the Class Period, there could be no scienter. While these arguments are not dispositive on the issue of motive, it was plausible that they could cause a jury to question Defendants' intent to commit fraud.

C. Loss Causation and Damages

86. Even if a jury found Plaintiffs succeeded in proving falsity and scienter, there remained a risk related to Plaintiffs' ability to prove loss causation and damages. Defendants were expected to argue that loss causation could not be established because information concerning OCA's association with lipid abnormalities was already known to the market and that Plaintiffs could not disaggregate non-fraud related factors from the declines in Intercept's stock price. Defendants would have further argued that the methodology Plaintiffs' expert used to prove damages at trial (the same methodology Defendants disputed at class certification) was unreliable. No doubt, Defendants' arguments, like Plaintiffs', would be buttressed by expert witnesses, and issues relating to loss causation and damages would have likely come down to an inherently unpredictable "battle of the experts."

87. While Plaintiffs would have had the burden of identifying and isolating the fraud-related damages suffered by Class Members, Defendants only had to identify a flaw with the methodology utilized by Plaintiffs' experts and prevail on a *Daubert* motion or win the inevitable battle of the experts before the jury. Defendants would have argued that the case either should not reach a jury or that the jury had no choice but to determine that there were little or no cognizable damages.

88. Although Plaintiffs were confident that they would have been able to support their claims with qualified and persuasive expert testimony, jury reactions to competing experts are

difficult to predict, and Defendants would have presented highly experienced experts to support their various defenses to liability. Accordingly, in the absence of a settlement, there was a very real risk that the Class would have recovered an amount significantly less than the total Settlement Amount – or even nothing at all.

89. In short, the parties disagreed on the merits of this case, including whether or not damages were suffered and recoverable. Defendants strongly defended this lawsuit with experienced attorneys from Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and consistently denied that they were liable in any respect. Recovery of any amount at trial was far from certain.

90. Then, assuming Plaintiffs prevailed at trial, it is likely that Defendants would file post-trial motions and appeals to limit or overturn any verdict in Plaintiffs' favor. The post-trial motion and appeals process would likely span several years, during which time the Class would receive no payment. In addition, an appeal of any verdict would carry with it the risk of reversal, in which case the Class would receive no payment despite having prevailed on the claims at trial.

91. While Lead Counsel had developed strong documentary and testimonial evidence, it faced both factual and legal challenges in presenting this matter to a jury and potentially on appeal. Based on all these factors, as well as the extensive experience of Lead Counsel in the litigation of securities class actions, Lead Counsel submits that the Settlement, which provides a very substantial recovery to Class Members, is far more beneficial than any of the realistic alternatives offered by continued litigation.

IV. SETTLEMENT NEGOTIATIONS AND TERMS

92. While Plaintiffs' class certification motion was pending, and just prior to the completion of fact discovery, the parties began settlement discussions with John Van Winkle, a nationally-recognized mediator with experience resolving complex litigation and class actions. Prior

to the mediation, the parties submitted and exchanged detailed mediation statements, exhibits, and materials prepared by the parties' loss causation and damages consultants that outlined each side's critical facts and legal principles.

93. Starting on March 10, 2016, the parties participated in a mediation session in New York with Mr. Van Winkle that continued for a second day. In connection with the mediation process, Plaintiffs conducted arm's-length negotiations with respect to a potential compromise and settlement of the Litigation with a view to achieving the best relief possible consistent with the interests of the Class. The settlement discussions were led by undersigned counsel and Trig Smith, both of whom have extensive experience in litigating and resolving complex cases in federal courts. The lead negotiators on the defense side from WilmerHale had similar substantial experience in resolving complex litigation. On the second day of the mediation, the parties reached an agreement-in-principle to resolve the Litigation, subject to the negotiation of mutually acceptable terms of a settlement agreement.

94. The parties then negotiated, drafted, finalized, and signed the formal settlement agreement detailing the terms of the proposed Settlement, which was submitted to the Court with the Motion for Preliminary Approval of Settlement filed on May 5, 2016. *See* Dkt. No. 113. On May 23, 2016, the Court granted preliminary approval of the Settlement as well as the form and manner of notice of the Settlement to the Class. Dkt. No. 118.

95. The Settlement set forth in the Stipulation resolves the claims of the Class against all Defendants. The Stipulation provides that Intercept will pay or cause to be paid $55,000,000 in cash, inclusive of attorneys' fees and costs. The recovery to individual Class Members will depend on variables, including the number of shares of Intercept common stock the Class Member purchased or acquired and when and at what price such purchases or acquisitions were made. In the

event that 100% of the eligible common stock of Intercept purchased or acquired by Class Members participate in the Settlement, the estimated average distribution per share of Intercept common stock will be approximately $48.27 before deduction of any Court-approved fees and expenses. Historically, actual claim rates are lower than 100%, resulting in higher per share distributions.

A. The Settlement Is in the Best Interests of the Class and Warrants Approval

96. Plaintiffs believe they would have prevailed on the merits at trial. Defendants were just as adamant that Plaintiffs would not have. There was a very real risk that Plaintiffs would not have convinced a jury that Defendants acted with scienter or that the alleged misrepresentations and omissions were materially false and misleading when made.

97. Having considered the foregoing, and evaluated Defendants' defenses, it is the informed judgment of Lead Counsel, based upon all proceedings to date and its extensive experience in litigating class actions under the federal securities laws, that the proposed Settlement of this matter before the Court is fair, reasonable, and adequate, and in the best interest of the Class.

98. The Settlement here represents an extremely good result. The Settlement Amount reflects a recovery of approximately 35% of the total estimated damages. Indeed, the recovery of $27.5 million for each day in the Class Period is, Lead Counsel believes, the largest per-class-day recovery in the history of securities litigation. Given both the risks at trial and the recognition that not all damaged Class Members will seek recovery, the size of the recovery strongly supports approval. In fact, the recent report published by NERA Economic Consulting, attached as Exhibit A, finds that in cases like this one, the median settlement recovers only 2.6% of the estimated damages. Ex. A at 33, Figure 29. The recovery here is more than 13 times greater than the average.

B. The Plan of Allocation

99. The Net Settlement Fund will be distributed to Class Members who, in accordance with the terms of the Stipulation, are entitled to a distribution and who submit a valid and timely Proof of Claim and Release form. The Plan of Allocation provides that a Class Member will be eligible to participate in the distribution of the Net Settlement Fund only if the Class Member has an overall net loss on all of his, her, or its transactions in Intercept common stock during the Class Period.

100. For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, Lead Counsel conferred with its economics and damages expert, Dr. Feinstein, and the proposed Plan of Allocation reflects an assessment of the damages that could have been recovered by Class Members had Plaintiffs prevailed at trial. The plan is premised on the out-of-pocket measure of damages and is designed to measure the difference between what Class Members paid for Intercept common stock during the January 9 to January 10, 2014 Class Period and what the price of Intercept stock would have been had the allegedly omitted information regarding OCA and the FLINT trial been disclosed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of July, 2016, at San Diego, California.

s/ Tor Gronborg
TOR GRONBORG

CERTIFICATE OF SERVICE

I, Tor Gronborg, hereby certify that on July 27, 2016, I caused a true and correct copy of the attached:

> Declaration of Tor Gronborg in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and for an Award of Attorneys' Fees and Expenses and Award to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4)

to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filings to all counsel registered to receive such notice.

s/ Tor Gronborg
TOR GRONBORG

EXHIBIT A

NERA
ECONOMIC CONSULTING

25 January 2016

Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review

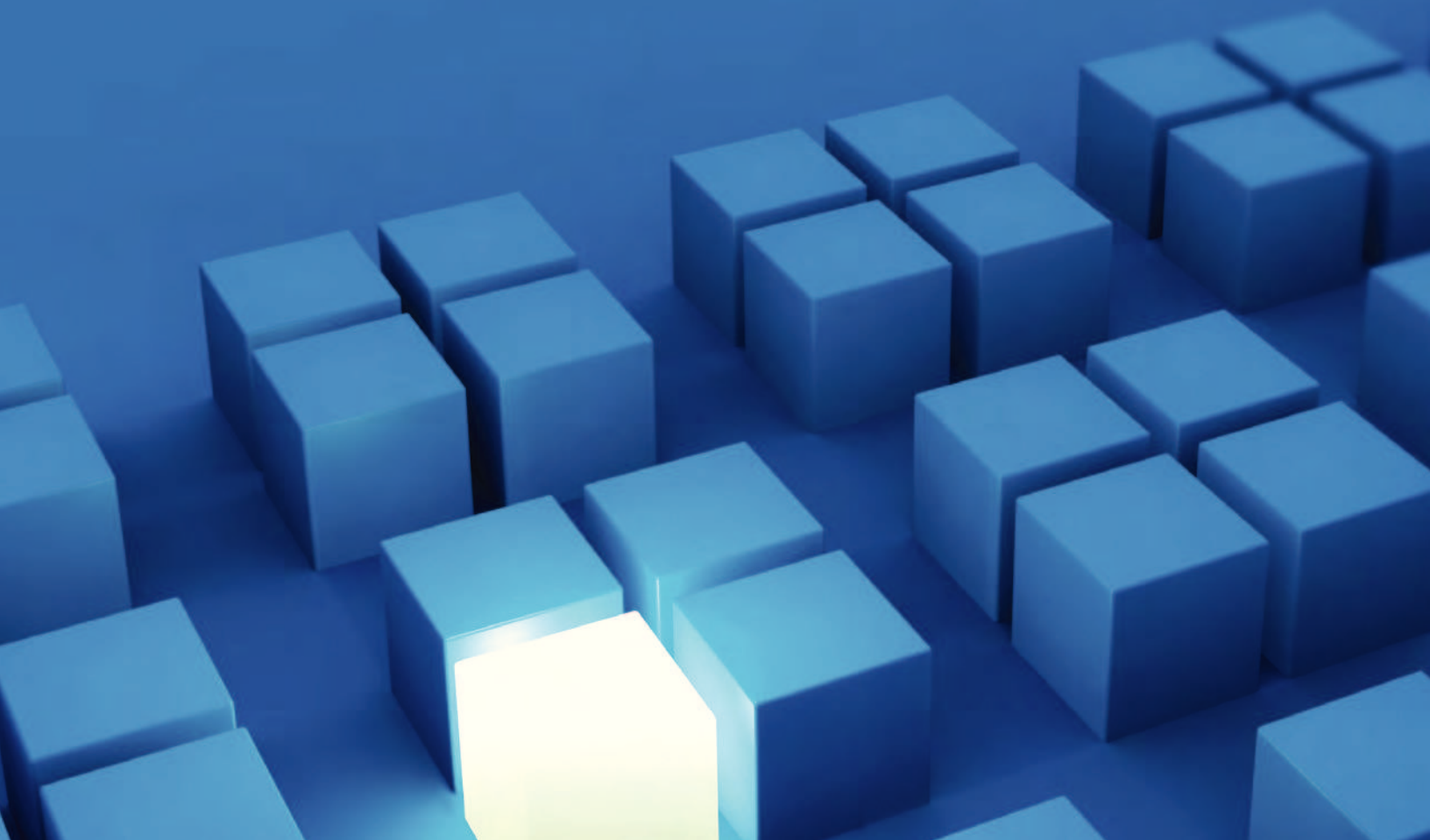
Record Number of Cases Being Filed Faster than Ever with the Shortest Alleged Class Periods

By Svetlana Starykh and Stefan Boettrich

Insight in Economics™

"I am pleased to share NERA's *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review* with you. This edition builds on our work over numerous years by many of the members of NERA's Securities and Finance Practice. In this edition, we look at trends in filings and settlements and present some new findings on when cases are filed and on how the length of class periods has changed. We also provide more information on our model for predicting settlements based on updated statistical analyses of hundreds of securities class actions. While space does not permit us to show all of the analyses that the authors have undertaken in preparation for this edition, we hope that you will contact us if you want to learn more. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope that you find it informative."

Dr. David Tabak, *Senior Vice President*



Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review

Record Number of Cases Being Filed Faster than Ever with the Shortest Alleged Class Periods

By Svetlana Starykh and Stefan Boettrich[1]

25 January 2016

Introduction and Summary[2]

2015 saw federal securities class action filings reach levels not seen since 2008, with 234 complaints filed. Growth was dominated by 182 filings alleging violations of Rule 10b-5, Section 11, or Section 12, which capped three years of double-digit growth in the category. Filings were particularly concentrated in the technology sector, which accounted for more than a fifth of all filings, and in the Ninth Circuit, which easily dominated the Second Circuit and accounted for nearly a third of all filings.

Generally, alleged class periods were the shortest on record, with the median falling to merely 310 days. Despite these shorter class periods, filed cases were not necessarily smaller. In fact, using NERA's proxy for aggregate case size, total potential case size increased by more than 25% in 2015, from $145 billion in 2014 to $183 billion in 2015, due to the filing of three very large cases.

Cases were also filed more quickly in 2015 than in prior years. In 2015 the median time between the end of the alleged class period and filing date shortened to a record 11 days, down almost 40% since 2014.

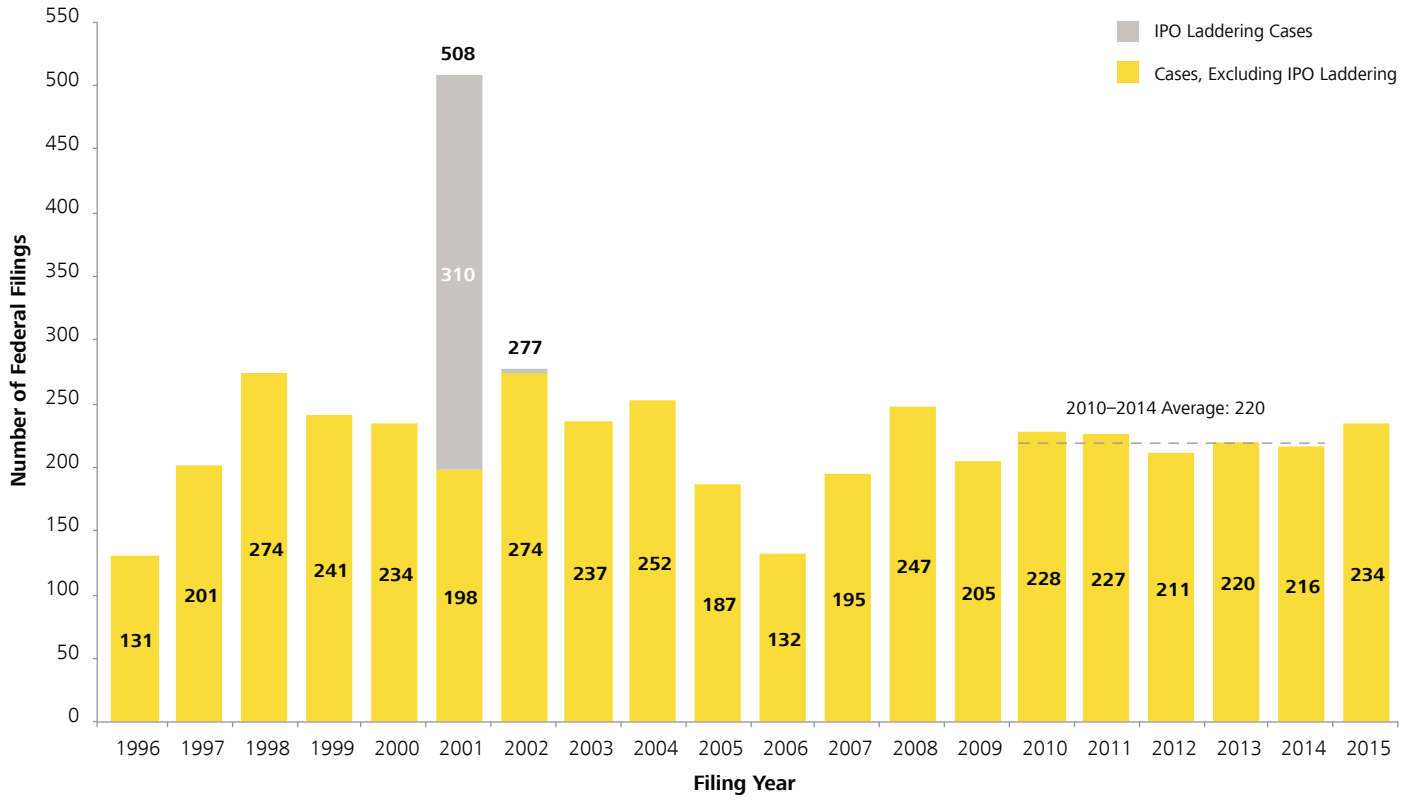
Although 108 cases settled in 2015, more than in any year since 2011, when 128 settled, cases continue to resolve at rates that are low by historical standards. Median settlement values were little changed from last year, staying at approximately $7 million, but 14 settlements for more than $100 million drove one measure of 2015 average settlement values to $52 million, close to the all-time high of $54 million set in 2013. The number of voluntary dismissals for cases filed and dismissed within the same calendar year more than tripled from four in 2014 to 13 in 2015.

Trends in Filings

Number of Cases Filed

In 2015, 234 securities class actions were filed in federal courts, more than in any year since 2008, at the height of the financial crisis. See Figure 1. The number of filings in 2015 is 8% higher than in 2014, and about 6% higher than the average rate of the preceding five years. The 2015 rate is well above the post-Private Securities Litigation Reform Act (PSLRA) average of approximately 216 cases per year.

Figure 1. **Federal Filings**
January 1996–December 2015

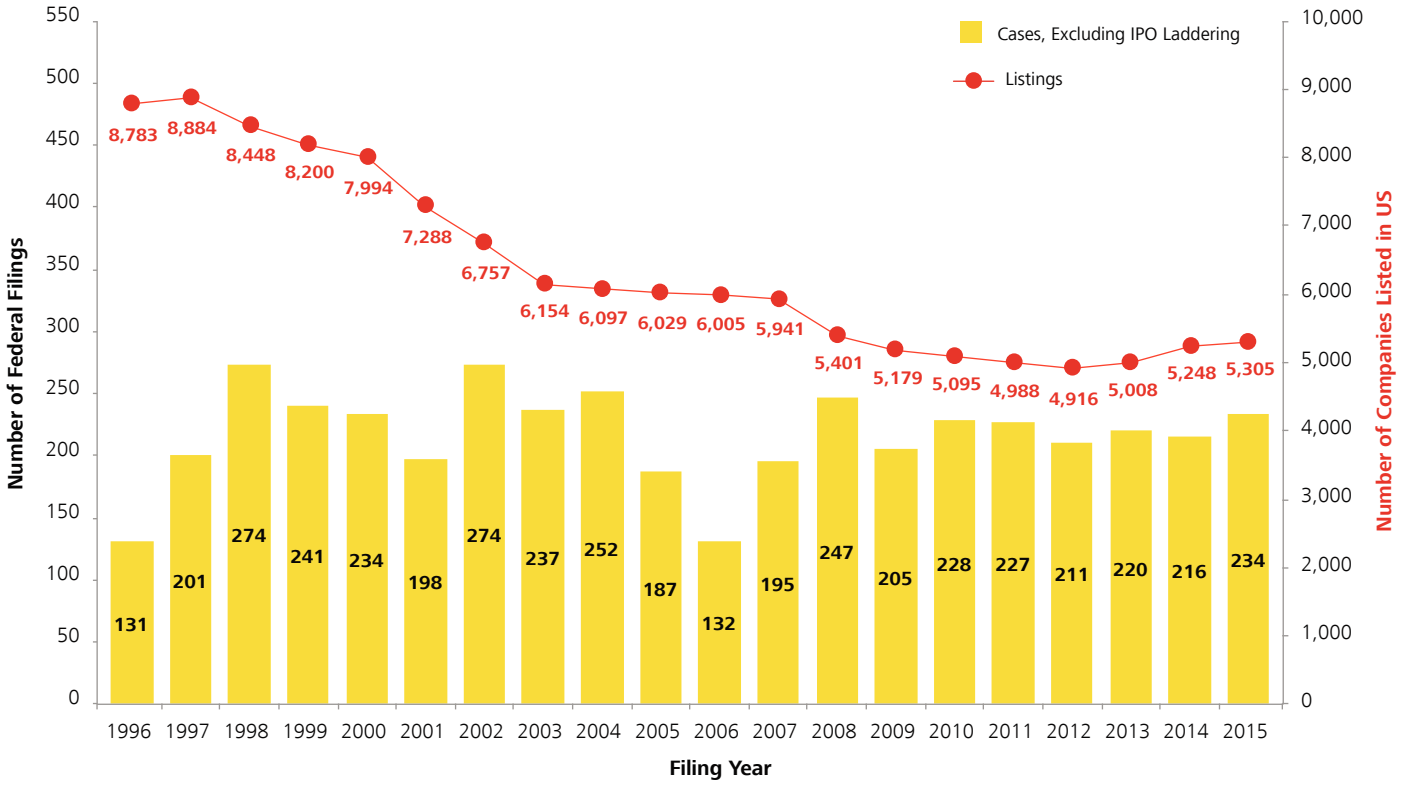


As of October 2015, 5,305 companies were listed on the major US securities exchanges. See Figure 2. The 234 federal securities class action suits filed in 2015 represent approximately 4.4% of publicly traded companies.

Over the two decades since the PSLRA went into effect, the number of companies listed on the major US exchanges has fallen by approximately 40%, from 8,783 to 5,305.[3] Despite this large drop in listed companies, the average number of filings of securities class actions over the preceding five years, of about 220 per year, is higher than the average number of filings over the first five years after the PSLRA went into effect, of about 216 per year.

Given that more securities class actions have been filed against fewer listed companies, the average rate of securities litigation has increased. Over the first five years after the PSLRA went into effect, the average rate of litigation (the number of filings as a percent of listed companies) was approximately 2.6%, in contrast with the most recent five-year average rate of about 4.4%. On a yearly basis, the rate peaked in 2008 at nearly 4.6%. The modest decline to 4.4% in 2015 can be traced to a drop in filings and listings.

Figure 2. **Federal Filings and Number of Companies Listed in US**
January 1996–December 2015



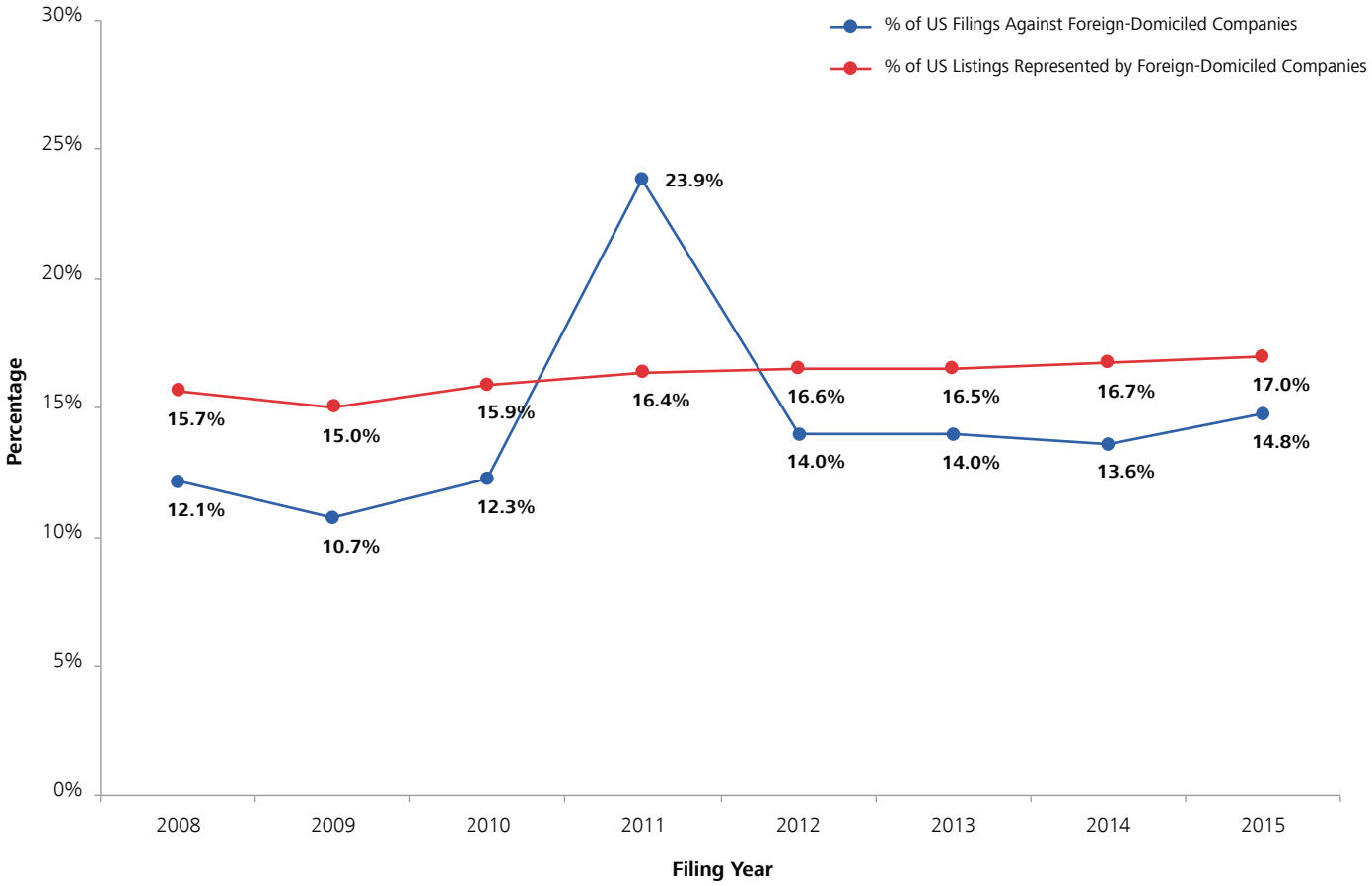
Note: Number of companies listed in US is from Meridian Securities Markets; 1996–2014 values are year-end; 2015 is as of October.

Filings by Issuers' Country of Domicile

In 2011, a record 23.9% of cases were filed against foreign issuers, considerably higher than the 16.4% of foreign issuers listed. See Figure 3. The increase was mostly due to a surge in filings against companies domiciled or with principal executive offices in China. 2011 was the only recent period in which foreign-domiciled companies were disproportionally targeted by securities class actions; in other years, the proportion of foreign class actions was less than the proportion of foreign listings.

The percent of filings against foreign issuers declined from 2011 to 2012 but has remained elevated above prior levels. In 2015, compared to 2014, the percent of filings against foreign issuers grew by nearly a percentage point more than the percent of foreign listings on US stock exchanges.

Figure 3. **Foreign-Domiciled Companies: Share of Filings and Share of All Companies Listed in US**
January 2008–December 2015



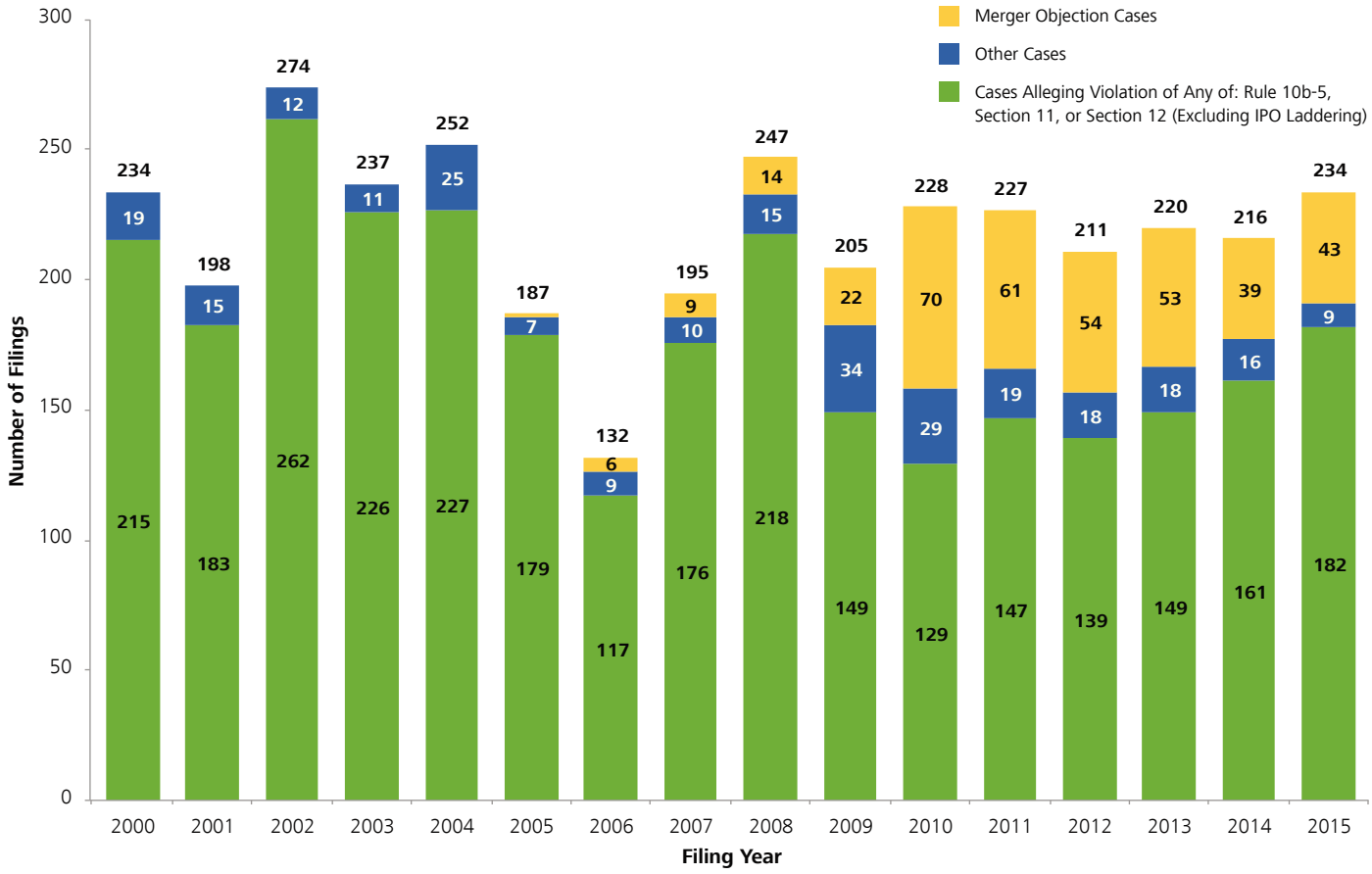
Filings by Type

Preceding the uptick in federal filings this year, the number of annual filings had been remarkably stable given the amount of variation in the types of cases filed. While the number of filings alleging violations of Rule 10b-5, Section 11, and/or Section 12—often regarded as "standard" securities class actions—fell in 2010 and 2012 to near all-time lows, filings of merger objection cases and other cases made up the difference. See Figure 4. Since then, the number of standard case filings has risen in each of the past three years. In 2015, standard case filings increased by 21 to 182, the annual largest jump since the 2008 financial crisis and a 41% increase over the 2010 low. Despite recent growth, the number of standard cases filed in 2015 remains lower than any year between 2000 and 2004.

Although federal merger objection cases were not a new case type, such cases came into focus in 2010, with 70 cases filed, or about 31% of all securities class actions that year.[4] Since then, the number of merger objections filed at the federal level has generally fallen: only 43 filings were submitted in 2015, accounting for about 18% of all filings. This is in spite of a record volume of announced US mergers and acquisitions in 2015, which exceeded $2 trillion for the first time ever.[5]

Rounding out the total in 2015 are a variety of other cases, primarily alleging breach of fiduciary duty for a variety of reasons.

Figure 4. **Federal Filings by Type**
January 2000–December 2015

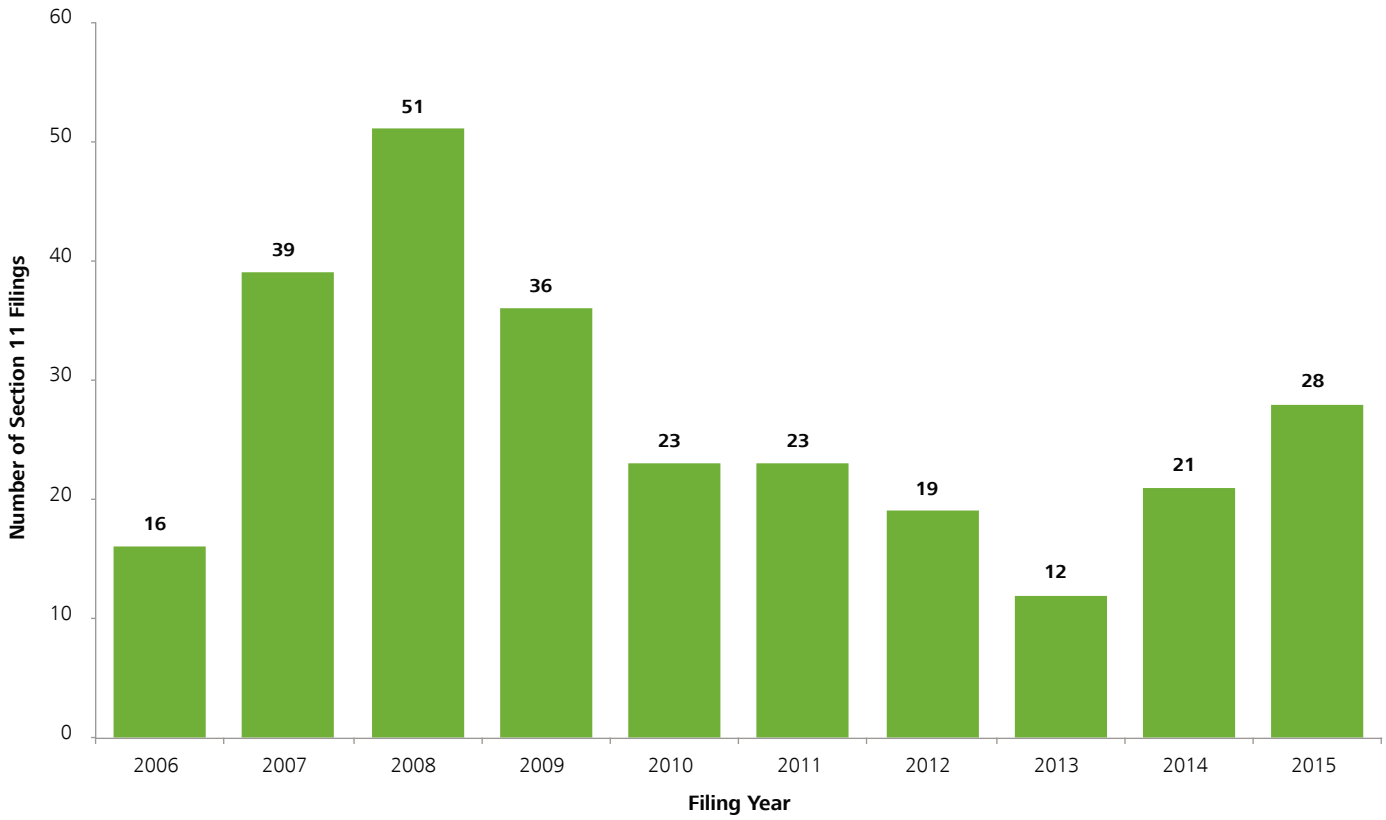


Note: Before 2005, merger objections (if any) were not disaggregated. This figure omits IPO laddering cases.

Section 11 Filings

In 2015 there were 28 filings alleging violations of Section 11, a one-third increase over 2014 and more than double the number over the past two years, as shown in Figure 5. These Section 11 filings were concentrated in two circuits. In the Ninth Circuit, filings grew from two to 10 over the last year and spanned many economic sectors. The Second Circuit also accepted 10 filings, roughly equal to 11 last year. The increase in filings alleging violations of Section 11 follows what, according to the *Financial Times*, was a "bumper IPO year" in 2014.[6] According to Mergerstat data, 289 IPOs were conducted in 2014, more than in any year since 2000.[7]

Figure 5. **Section 11 Filings**
January 2006–December 2015



Aggregate Investor Losses

In addition to the number of cases filed, we also consider the total potential size of these cases using a metric we label "investor losses."

NERA's investor losses variable is a proxy for the aggregate amount that investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period. Note that the investor losses variable is not a measure of damages, because any stock that underperforms the S&P 500 would have "investor losses" over the period of underperformance; rather, it is a rough proxy for the relative size of investors' potential claims. Historically, "investor losses" have been a powerful predictor of settlement size. Investor losses can explain more than half of the variance in the settlement values in our database.

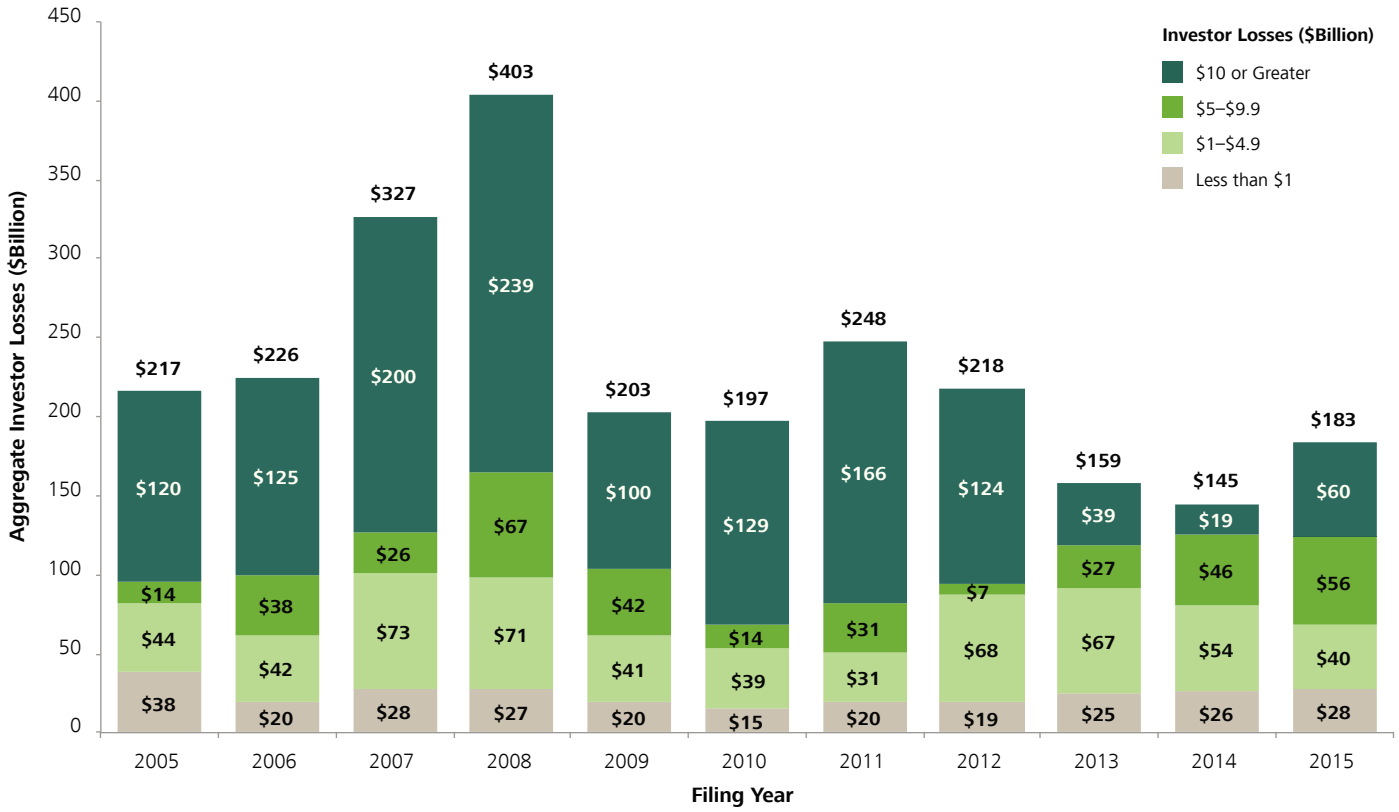
We do not compute investor losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are the IPO laddering cases and the merger objection cases. Previous NERA reports on securities class actions did not include investor losses for cases with only Section 11 allegations, but such cases are included here. The calculation for these cases is somewhat different than for cases with 10b-5 claims.

For each year since 2005, we calculate investor losses at the time of filing for each case for which they can be computed. Yearly losses are grouped by magnitude and aggregated, as shown in Figure 6.

In 2015, aggregate investor losses on all filed cases totaled $183 billion, a decrease of more than 25% from four years ago, but a marked increase of more than 25% over 2014 and 15% over 2013. 2013 and 2014 had the lowest aggregate investor losses over the past decade, primarily due to a dearth of large cases being filed. Historically, a few cases with very large investor losses (over $10 billion, and shown in dark green) have made up the largest component of total investor losses each year. In fact, for most years before 2012, cases with such high investor losses accounted for most of the total losses for the year. However, the pattern changed in 2013 and 2014, when cases in the lower investor loss categories made up the bulk of the total investor losses for the year.

In 2015, however, the pattern changed, and three cases with investor losses of over $10 billion were filed, the two largest being against Canadian issuers. A filing against Valeant Pharmaceuticals International accounted for 17% of the investor losses (and half of losses in the high investor loss category). Large filings against Silver Wheaton Corp. and Clovis Oncology, Inc. accounted for 9% and 7% of aggregate investor losses, respectively.

Figure 6. **Aggregate Investor Losses ($Billion)—Shareholder Class Actions with Alleged Violations of Rule 10b-5 or Section 11**
January 2005–December 2015



Filings by Circuit

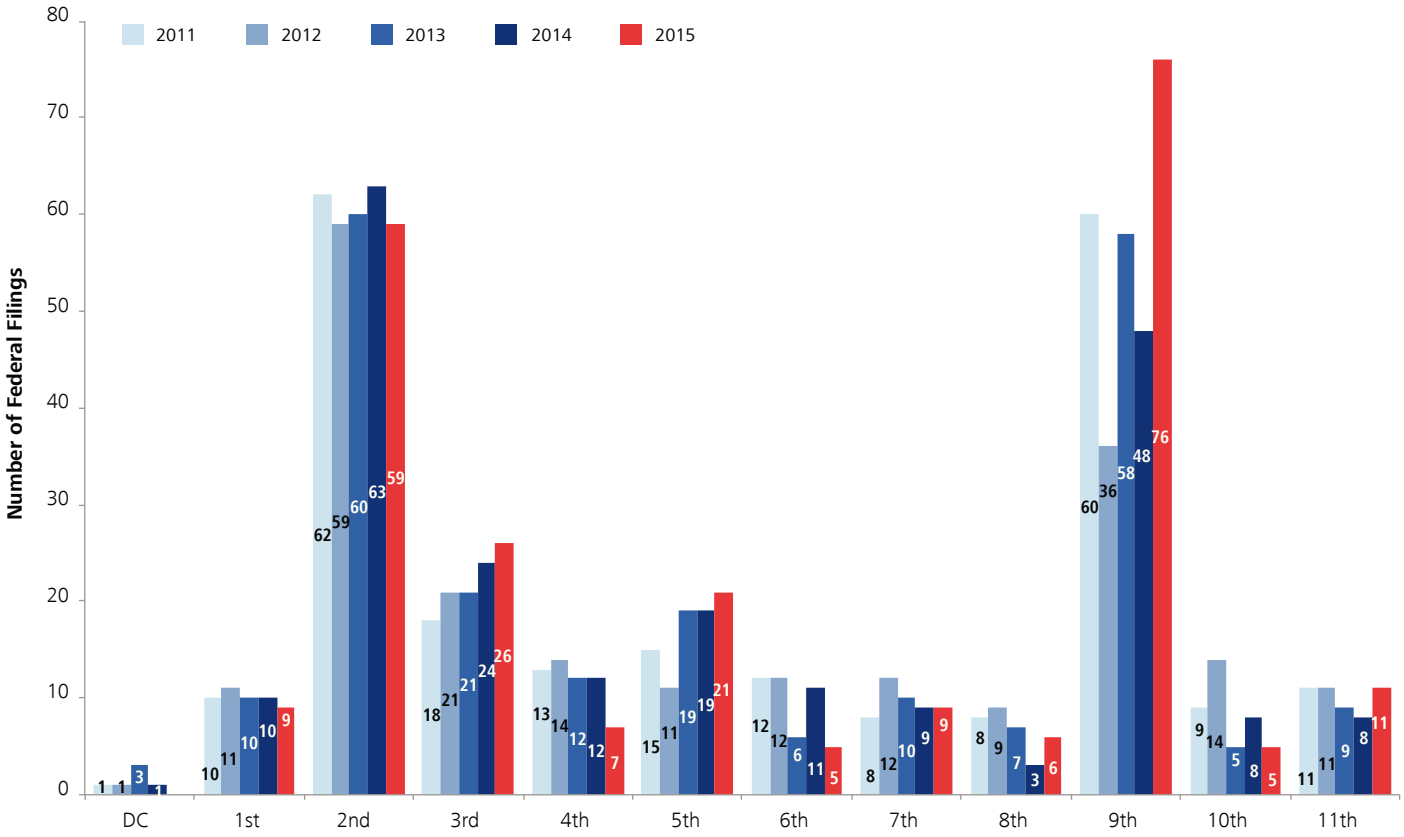
Filings continued to be concentrated in the Second and Ninth Circuits, where more cases were filed than all other circuits combined. See Figure 7.

Filings in the Ninth Circuit, which includes California, grew more than 58% to 76 filings, up from 48 last year. Of these, 65 alleged violations of Rule 10b-5, Section 11, and/or Section 12, an increase of 66% from 2014. More than 30% of the growth came from filings of cases alleging violations of Section 11, having increased from two in 2014 to 10 in 2015, a five-year high.

Filings in the Second Circuit have been relatively steady over the past five years. Although filings matched a five-year low of 59 in 2015, the maximum over this period is only about 7% higher at 63. Notably, fewer securities class actions were filed in the Second Circuit than in the Ninth Circuit for the first time in five years.

Recent steady growth in filings in the Third and Fifth Circuits continued in 2015. Third Circuit filings reached 26, up from 18 in 2011. Growth in filings alleging a violation of Rule 10b-5, Section 11, and/or Section 12 ("standard cases") dominated, increasing to 20 in 2015 from six in 2011. In the Fifth Circuit, 21 securities class actions were filed, of which about 60% were standard cases and about 40% were federal merger objection cases. The Fifth Circuit accepted a disproportionate number of merger objection cases in 2015: while only about 9% of securities class actions were filed in that circuit, more than 20% of merger objection cases were filed in the Fifth Circuit.

Figure 7. **Federal Filings by Circuit and Year**
January 2011–December 2015

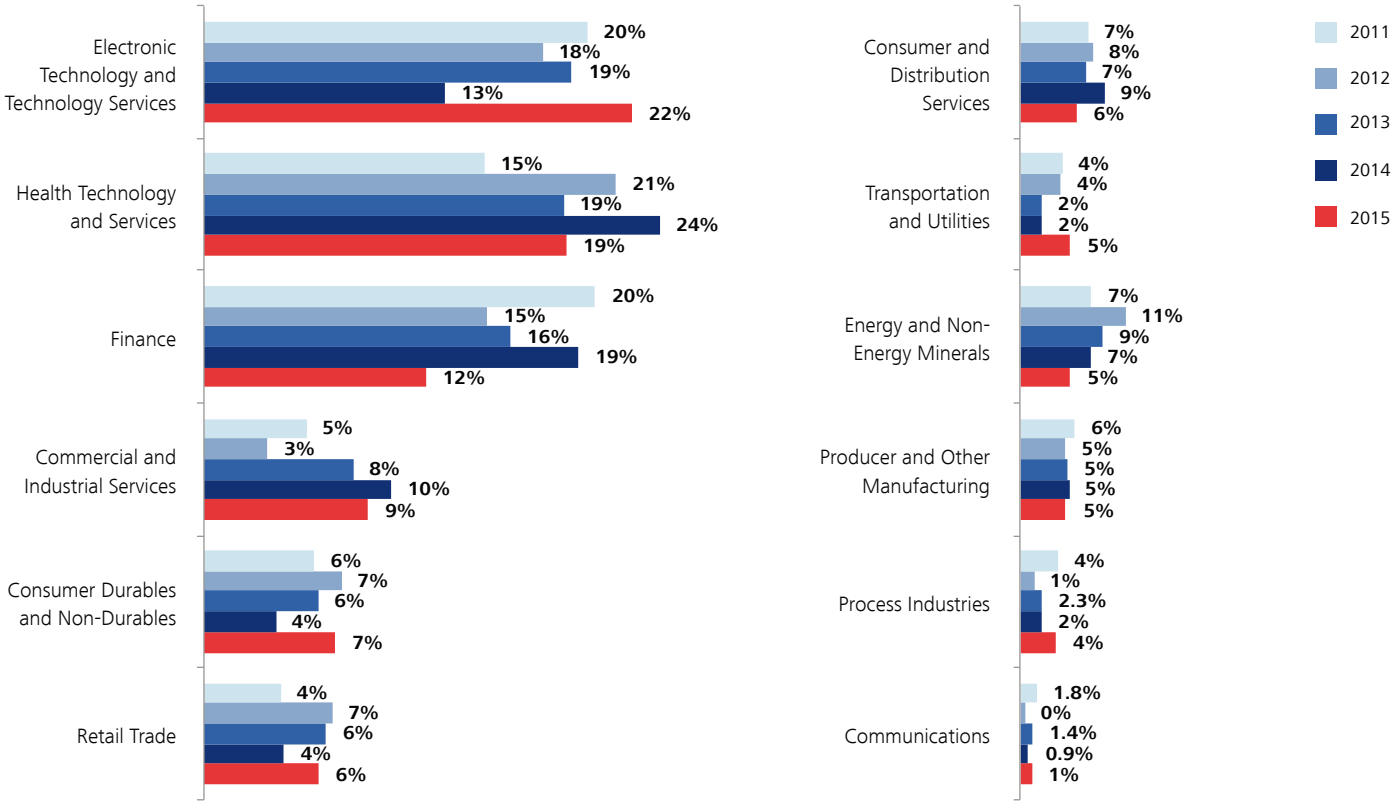


Filings by Sector

More than one out of every five securities class action cases filed in 2015 was against a firm in the Electronic Technology and Technology Services sector. See Figure 8. Filings in the sector eclipsed those in any other, and reached a five-year high in percentage terms. Filings in the sector totaled 52 in 2015, more than a 90% increase from 27 in 2014. Of these, filings alleging violations of Rule 10b-5 grew by nearly 61%, from 23 to 37.

There was a considerable drop in the percent of filings with claims against firms in the Finance sector, which fell to 12% in 2015, down from nearly 20% in 2011. In 2015, there were 27 filings with claims against Finance sector firms, down from 42 in 2014.

Figure 8. **Percentage of Filings by Sector and Year**
January 2011–December 2015

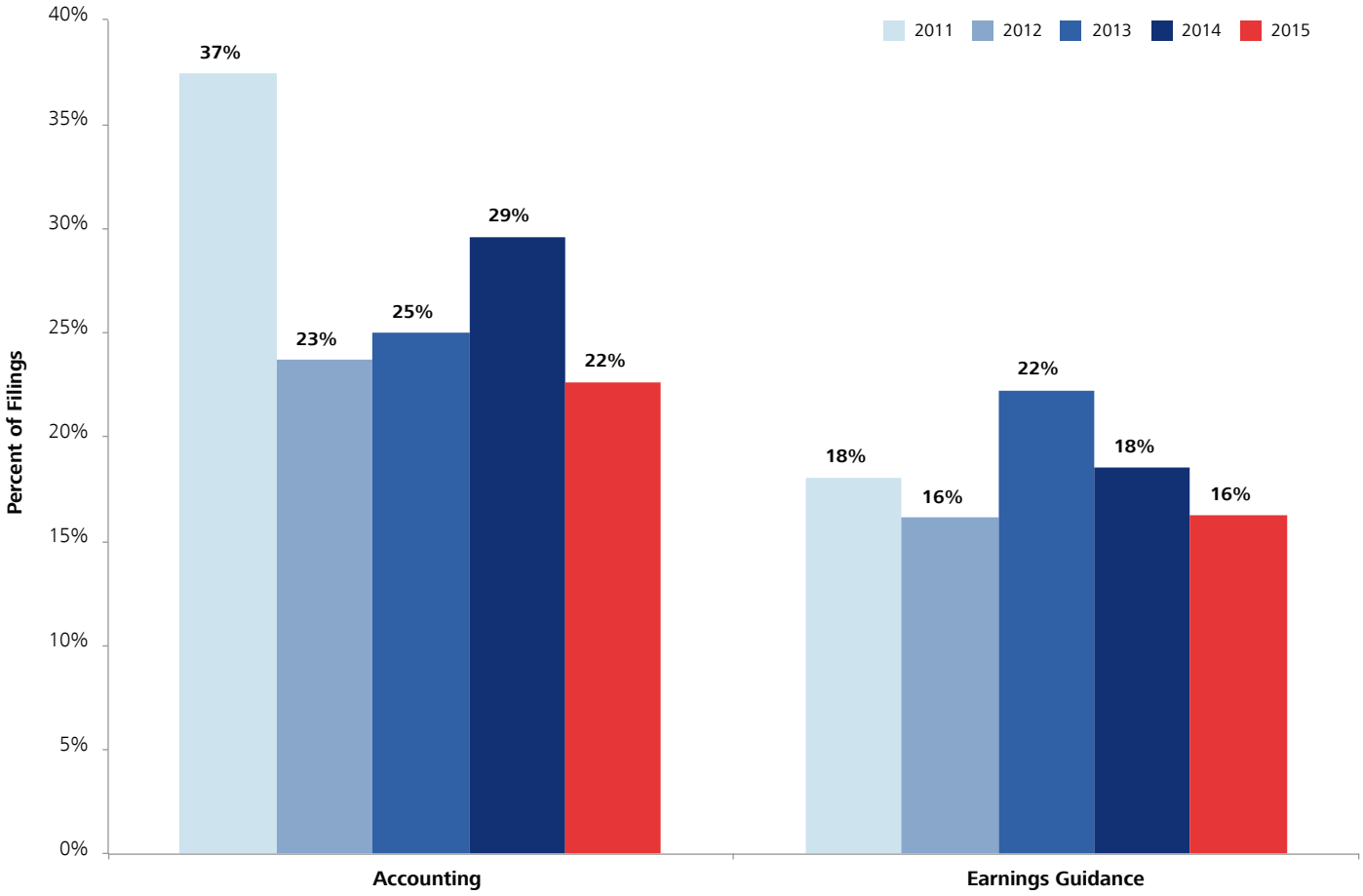


Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Allegations

In 2015, about 22% of filings contained accounting allegations, down from about 29% last year and from 37% in 2011. See Figure 9. The decline in accounting allegations is correlated with the short- and long-term reduction in cases with accounting co-defendants. The percent of filings alleging misleading earnings guidance continued to decrease to about 16% of filings in 2015. Most complaints include a wide variety of allegations, not all of which are depicted here. Due to multiple types of allegations in complaints, the same case may be included in both the accounting and missed-guidance allegation categories.

Figure 9. **Allegations Related to Accounting and Earnings Guidance**
January 2011–December 2015



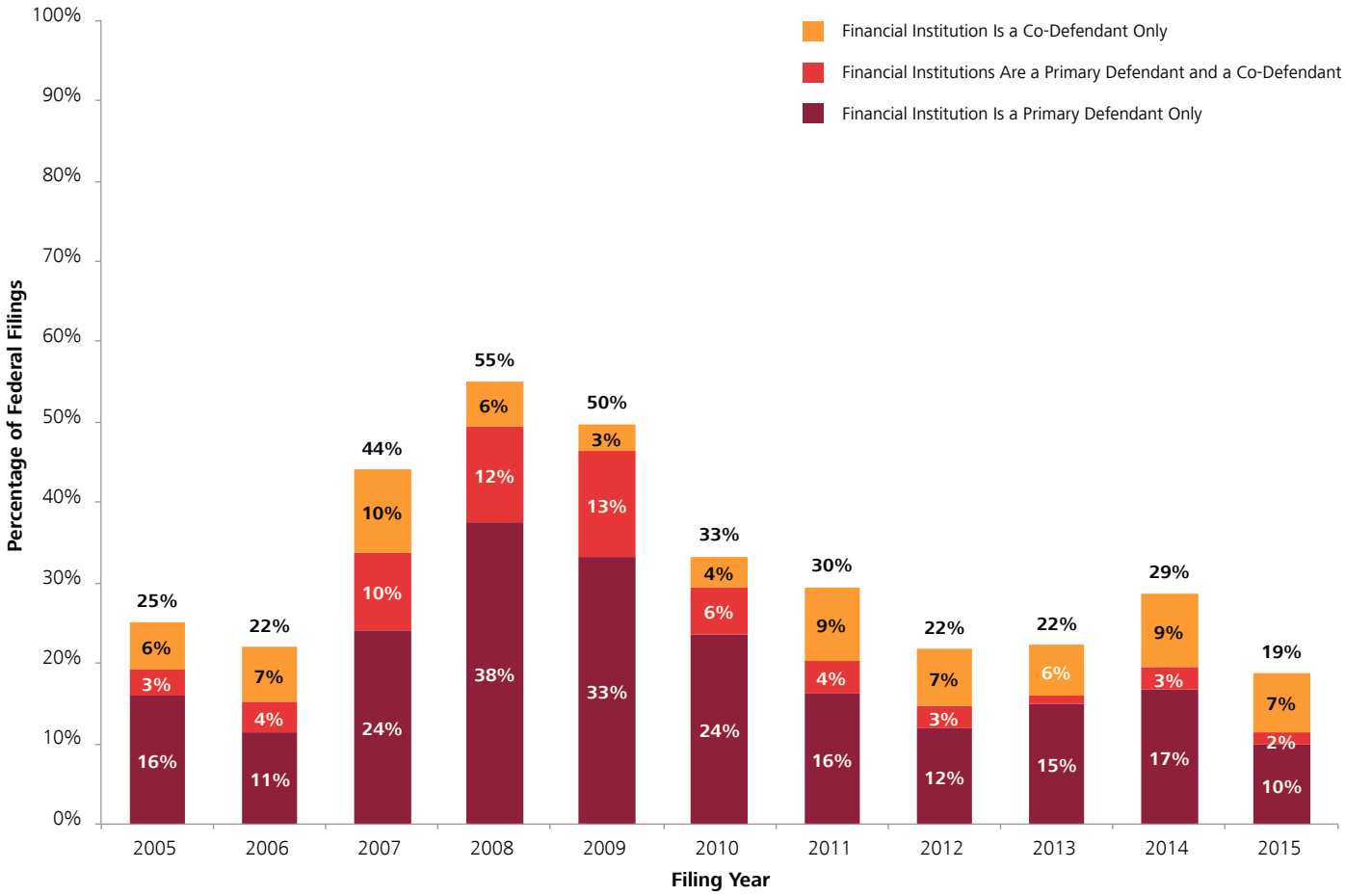
Defendants in the Financial Sector

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

In 2015, 19% of securities class actions filed had a defendant in the Financial sector (whether a primary defendant or co-defendant). See Figure 10. This is down sharply from 29% last year, and is mainly due to about an eight percentage point reduction in filings where the primary defendant is in the Financial sector, as also illustrated in Figure 8. This represents a continuation of the longer term decline in the percentage of filings with primary Financial sector defendants since the financial crisis when, in 2008, about 50% of securities class actions primarily targeted financial institutions.

The overall reduction also stemmed from a two percentage point drop in filings where financial institutions were only co-defendants (such as an underwriter co-defendant). Over the past decade, financial institutions were generally co-defendants in between 3% and 9% of filings where the primary defendant is not a financial institution. In 2015, this percentage was about 7%.

Figure 10. **Federal Cases in which Financial Institutions Are Named Defendants**
January 2005–December 2015



Accounting Co-Defendants

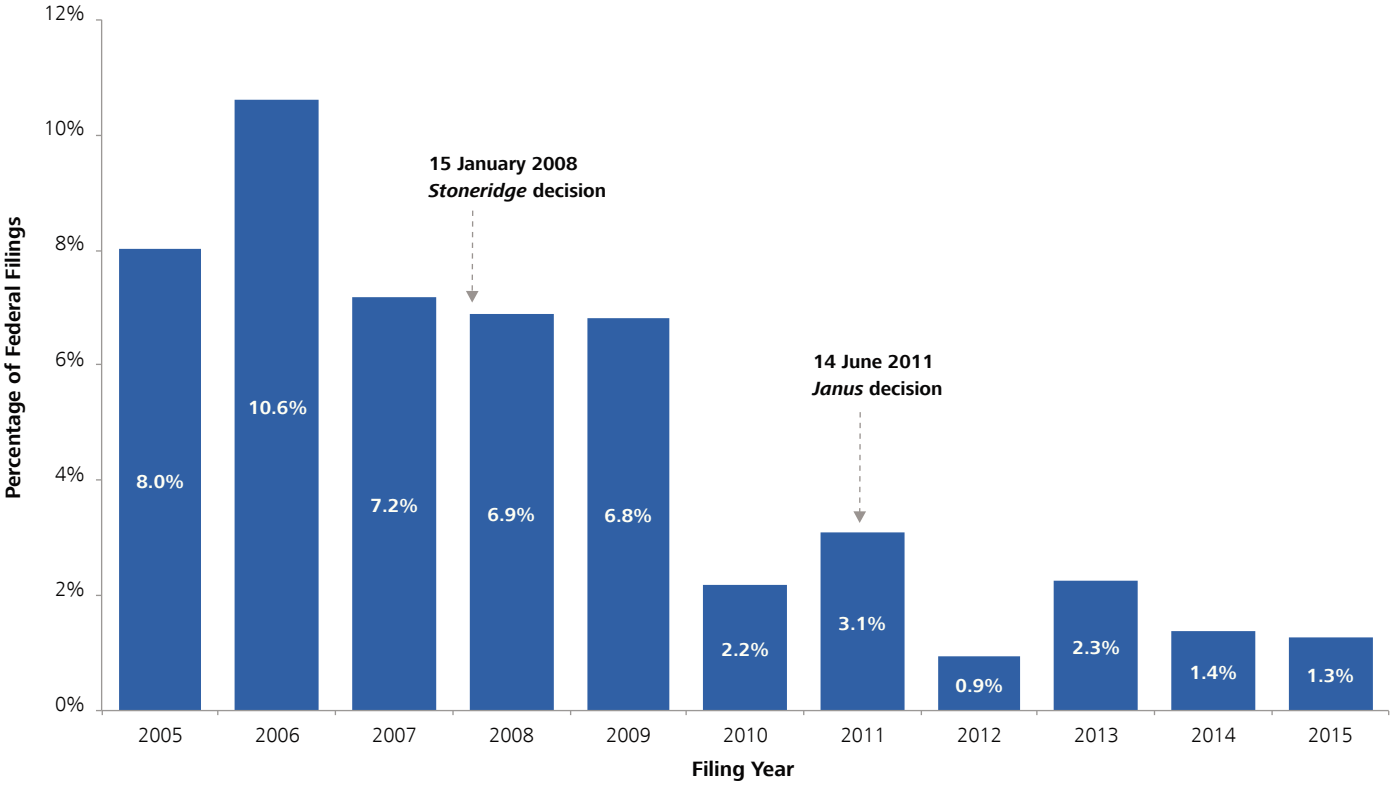
Only three securities class actions had an accounting firm as a co-defendant in 2015, one of which was a Big Four accounting firm.

The trend toward a decline in the percent of securities class actions with accounting firm co-defendants continued in 2015. This trend is likely the result of two factors: (1) fewer cases have been filed that include accounting allegations, and (2) changes in the legal environment relating to accounting co-defendants.

First, since 2011, the percent of filings with accounting claims dropped from about 37% to about 22%, while the percent of cases with an accounting co-defendant dropped from 3% to a little more than 1%. See Figure 11.[8]

The drop in the relative percent of filings with an accounting co-defendant, however, exceeded the decline of filings with accounting allegations, potentially due to changes in the legal environment, the second factor noted above. The legal environment was impacted by two Supreme Court rulings over the period. The Supreme Court's *Janus* decision in 2011 restricted the ability of plaintiffs to sue parties not directly responsible for misstatements.[9] This decision, along with the Court's *Stoneridge* decision in 2008, which limited scheme liability, may have made accounting firms less appealing targets for securities class action litigation.[10]

Figure 11. **Percentage of Federal Filings in which an Accounting Firm Is a Co-Defendant**
January 2005–December 2015

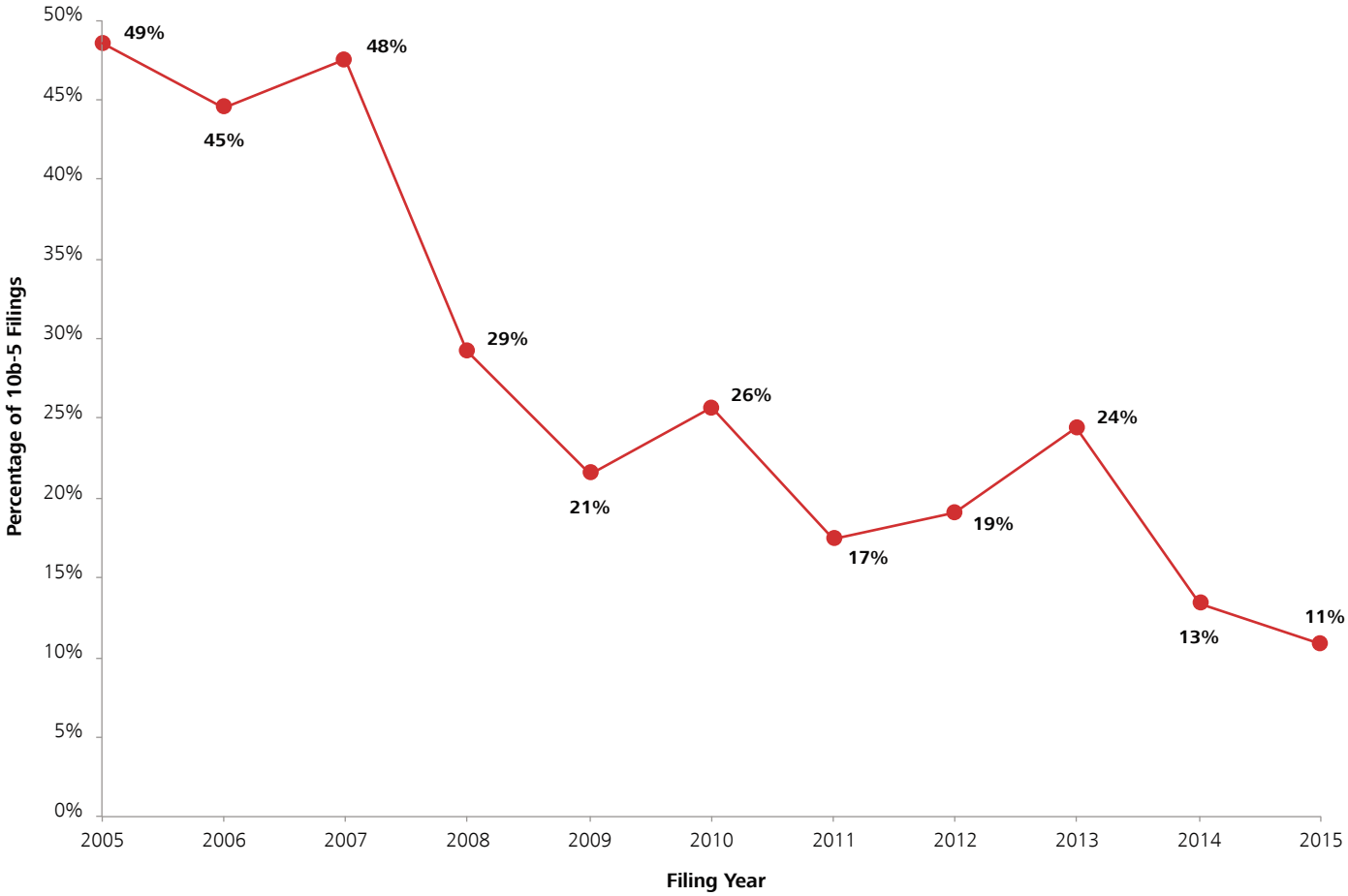


Note: Coded on the basis of the first (available) complaint.

Alleged Insider Sales

The percentage of 10b-5 class actions that also alleged insider sales continued to decrease in 2015, dropping from 49% in 2005 to 11% in 2015. See Figure 12.

Figure 12. **Percentage of Rule 10b-5 Filings Alleging Insider Sales**
By Filing Year, January 2005–December 2015

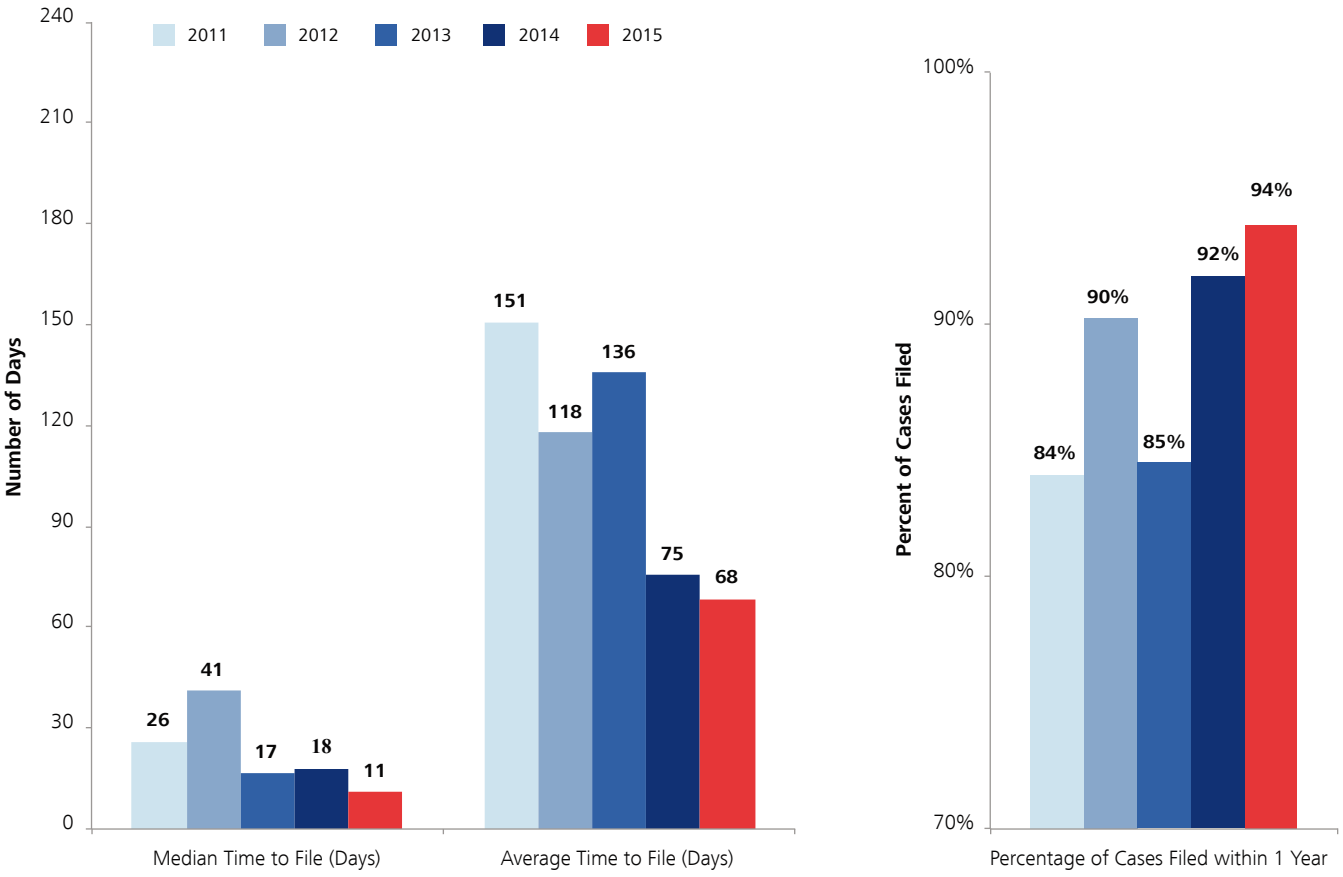


Time to File

The term "time to file" denotes the time between the end of the alleged class period and the filing date of the first complaint. Figure 13 illustrates how the median and average time to file (in days) has changed over the past five years, as well as the percent of cases in which the first complaint is filed within one year after the end of the purported class period.

All three indicators show that over the past few years, cases are generally being filed closer to the end of the alleged class periods. The 2015 median and average times to file were shorter than any other year in the past decade. In 2015, the percent of cases filed within a year of the purported class period exceeded 94%, higher than any other year in the past decade. It took only 11 days or less to file a complaint in 50% of cases in 2015. This shows a lower frequency of cases with long periods of time between when an alleged fraud was revealed and the filing of a related claim.

Figure 13. **Time to File from End of Alleged Class Period to File Date for Rule 10b-5 Cases**
January 2011–December 2015



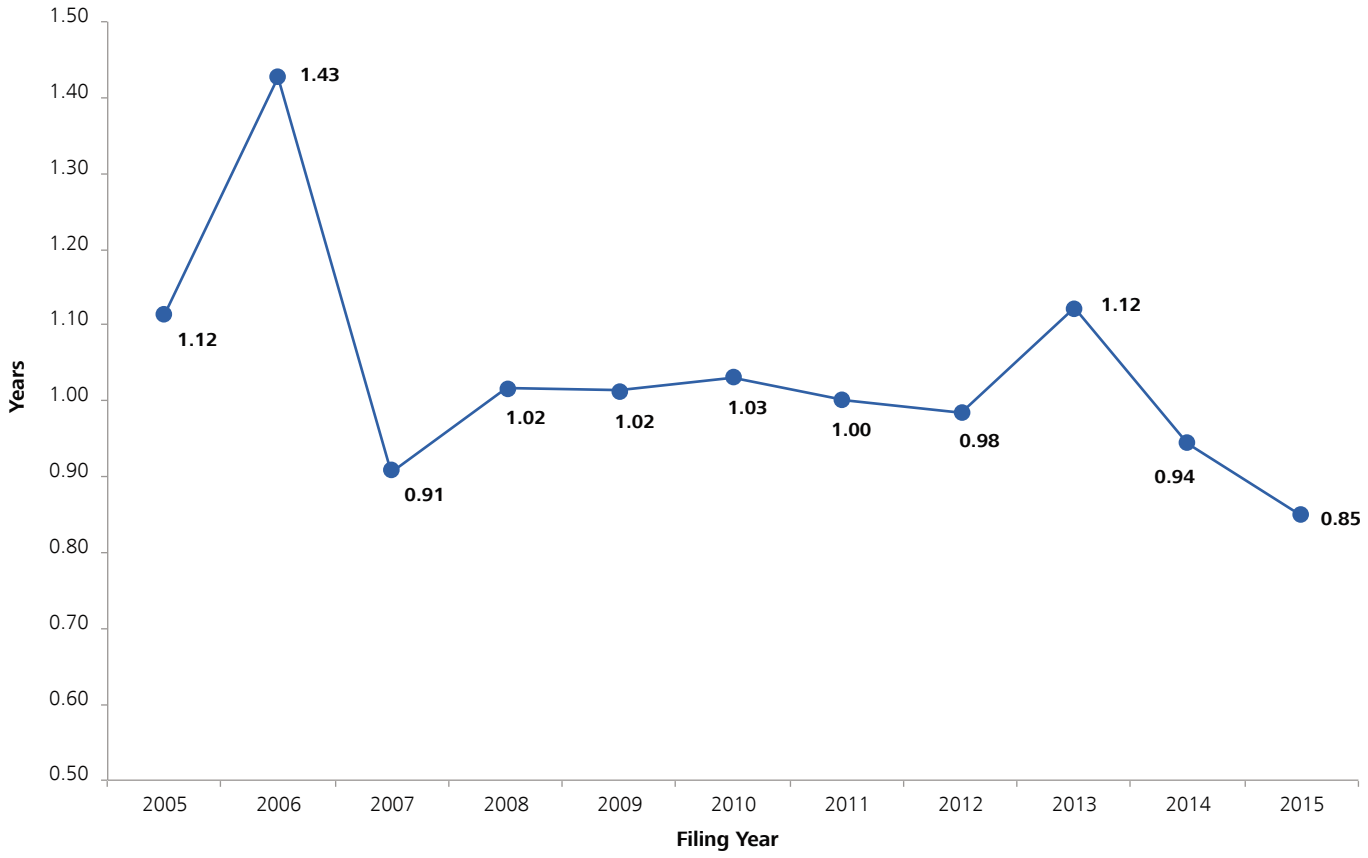
Note: This analysis excludes cases where alleged class period could not be unambiguously determined.

Class Period Length

For the second year in a row, the median class period length of filed securities class actions has fallen. See Figure 14. 2015 had the shortest median class period of any year in the past decade.

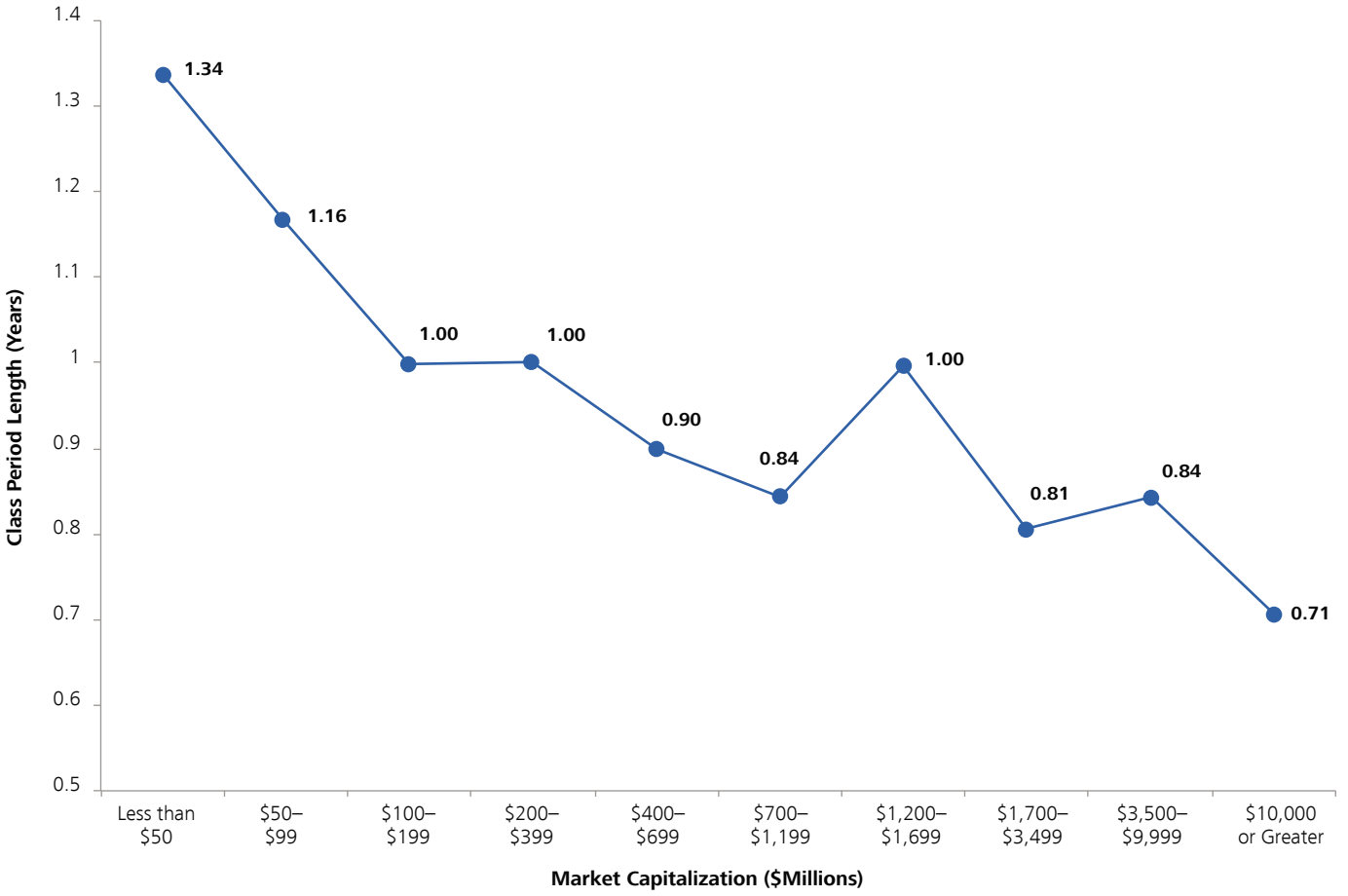
One reason class periods have been shorter may be that alleged malfeasance is being detected sooner.[11] One potential reason for such a trend towards earlier detection over the last couple years could be recent regulation changes, and higher issuer market capitalizations. In recent years, the SEC has enacted new regulations to combat securities fraud, including a mandate that all financial statements be filed in a machine-readable format. These filing guidelines were designed to increase transparency and facilitate more rapid detection of accounting anomalies.[12] For example, analysts can now use "data-scraping" programs to download financial data from numerous firms in a similar industry. This permits them to compare the financial figures of one company to those of its peers, enabling interested parties to more easily investigate whether an apparently unusual financial result is a reflection of something company-specific or is part of a broader industry trend. In August of 2011, the SEC also adopted rules to reward individuals who expose violations of securities laws, thus motivating whistleblowers.[13]

Figure 14. **Median Class Period Length—Excluding Merger Objection Cases, Cases Without Class Data, and Class Periods Longer than Five Years**
January 2005–December 2015



We also note that class period length tends to be negatively correlated with the market capitalization of the defendant firm. See Figure 15. While the data do not provide specific evidence on this, firm size may be a proxy for a firm's ability to catch or address potential errors more quickly, as larger firms likely have more comprehensive control systems. Between 2012 and 2015, the yearly median market capitalization of primary defendant firms was $658 million on average, up about 45% from $454 million between 2008 and 2011.

Figure 15. **Class Period Length vs. Issuer Market Capitalization—Excluding Merger Objection Cases, Cases Without Class Data, and Class Periods Longer Longer than Five Years**
January 2011–December 2015



Analysis of Motions

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

To correctly interpret the Figures, it is important to understand that we record the status of any motion as of the resolution of the case. For example, a motion to dismiss which had been granted but was later denied on appeal is recorded as denied, if the case settles without the motion being filed again.

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

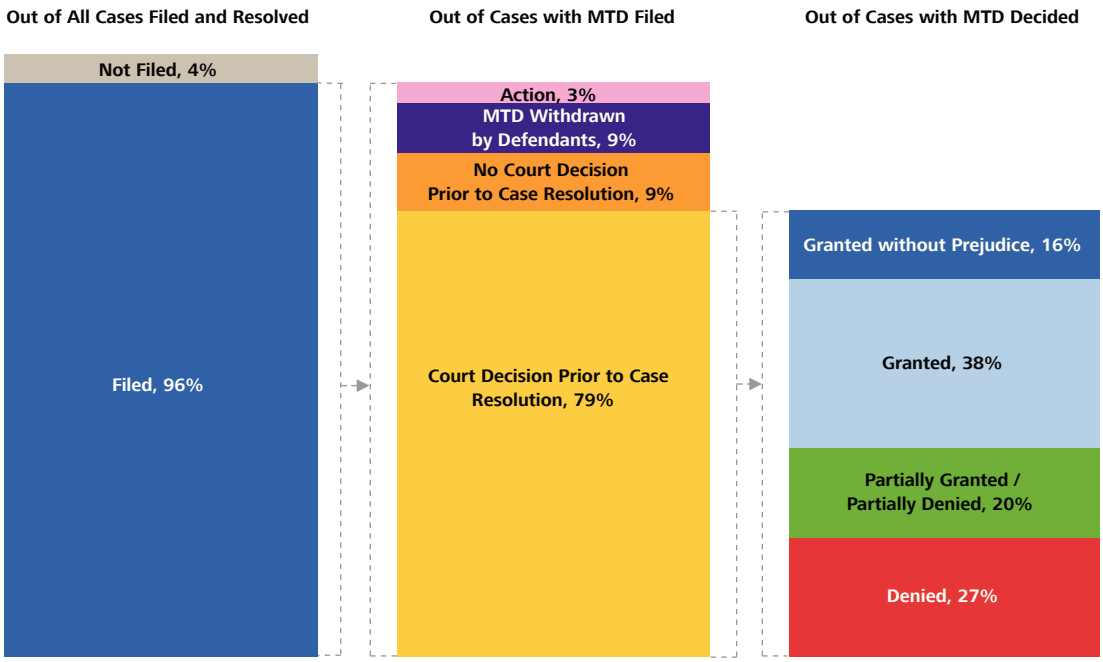
Motions for summary judgment were filed by defendants in 7.3%, and by plaintiffs in only 1.6%, of the securities class actions filed and resolved over the 2000–2015 period, among those we track. Outcomes of the motions for summary judgment are available from NERA, but not shown in this report.

Motion to Dismiss

A motion to dismiss was filed in 96% of the securities class actions tracked. However, the court reached a decision in only 79% of the motions filed. In the remaining 21% of cases in which a motion to dismiss was filed, either the case resolved before a decision was reached, plaintiffs voluntarily dismissed the action, or the motion to dismiss itself was withdrawn by defendants. See Figure 16.

Out of the motions to dismiss for which a court decision was reached, the following three outcomes classify all of the decisions: granted with or without prejudice (54%), granted in part and denied in part (20%), and denied (27%).

Figure 16. **Filing and Resolutions of Motions to Dismiss**
January 2015–December 2015



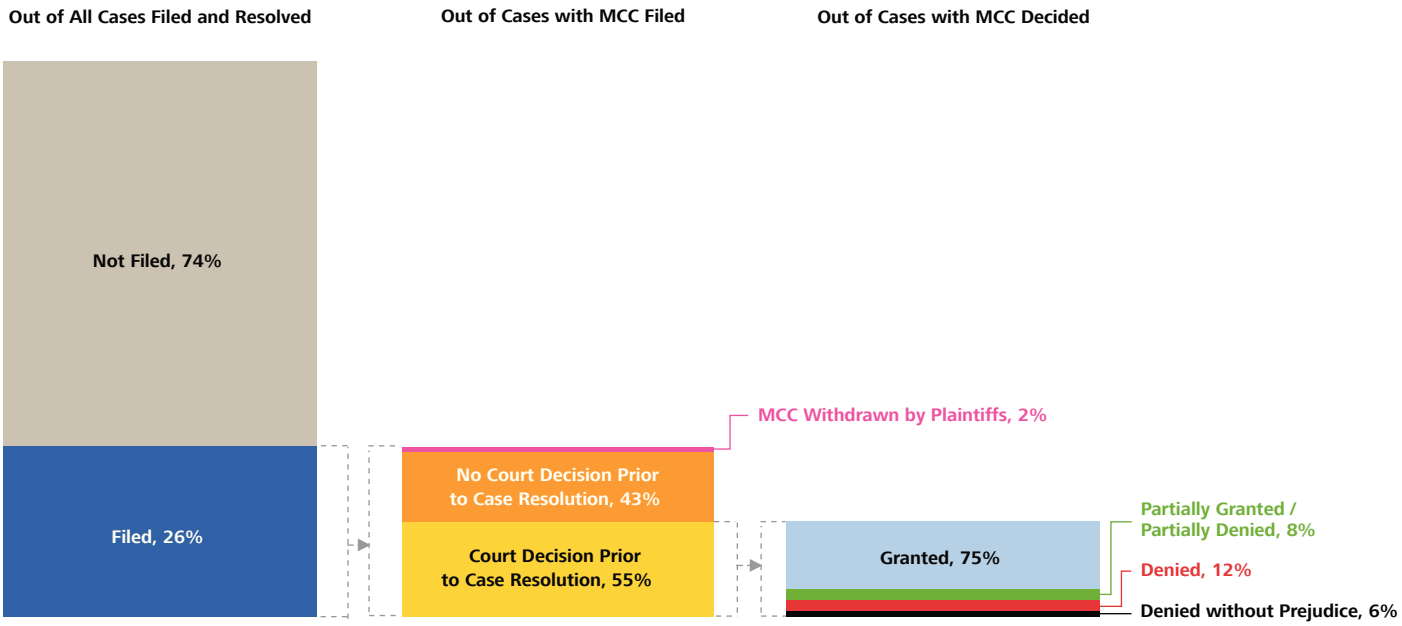
Note: Includes cases in which holders of common stock are part of the class and a 10b-5 or Section 11 violation is alleged.

Motion for Class Certification

Most cases were settled or dismissed before a motion for class certification was filed: 74% of cases fell into this category. Of the remaining 26%, the court reached a decision in only in 55% of the cases where a motion for class certification was filed. So, overall, only 14% of the securities class actions filed (or 55% of the 26%) reached a decision on the motion for class certification. See Figure 17.

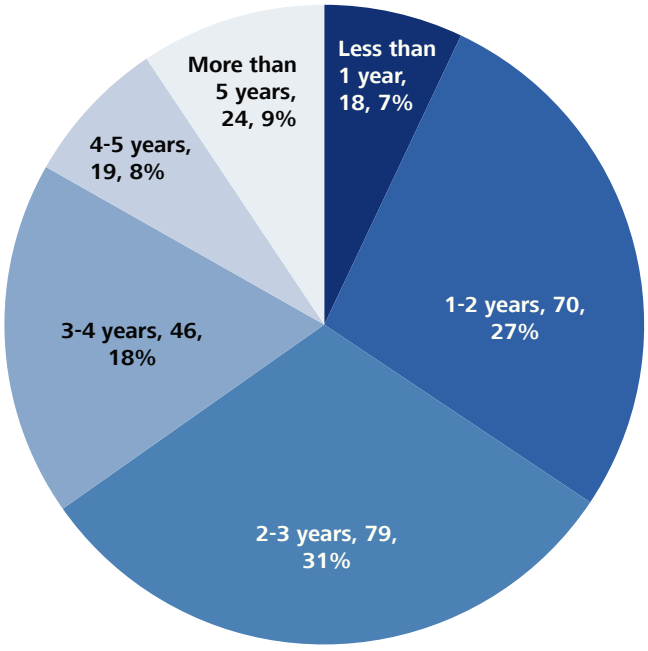
Our data show that 83% of the motions for class certification that were decided were granted in full or partially.

Figure 17. **Filing and Resolutions of Motions for Class Certification**
January 2015–December 2015



Approximately 65% of the decisions on motions for class certification that were reached were reached within three years of the original filing date of the complaint. See Figure 18. The median time is about 2.4 years.

Figure 18. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2000–December 2015



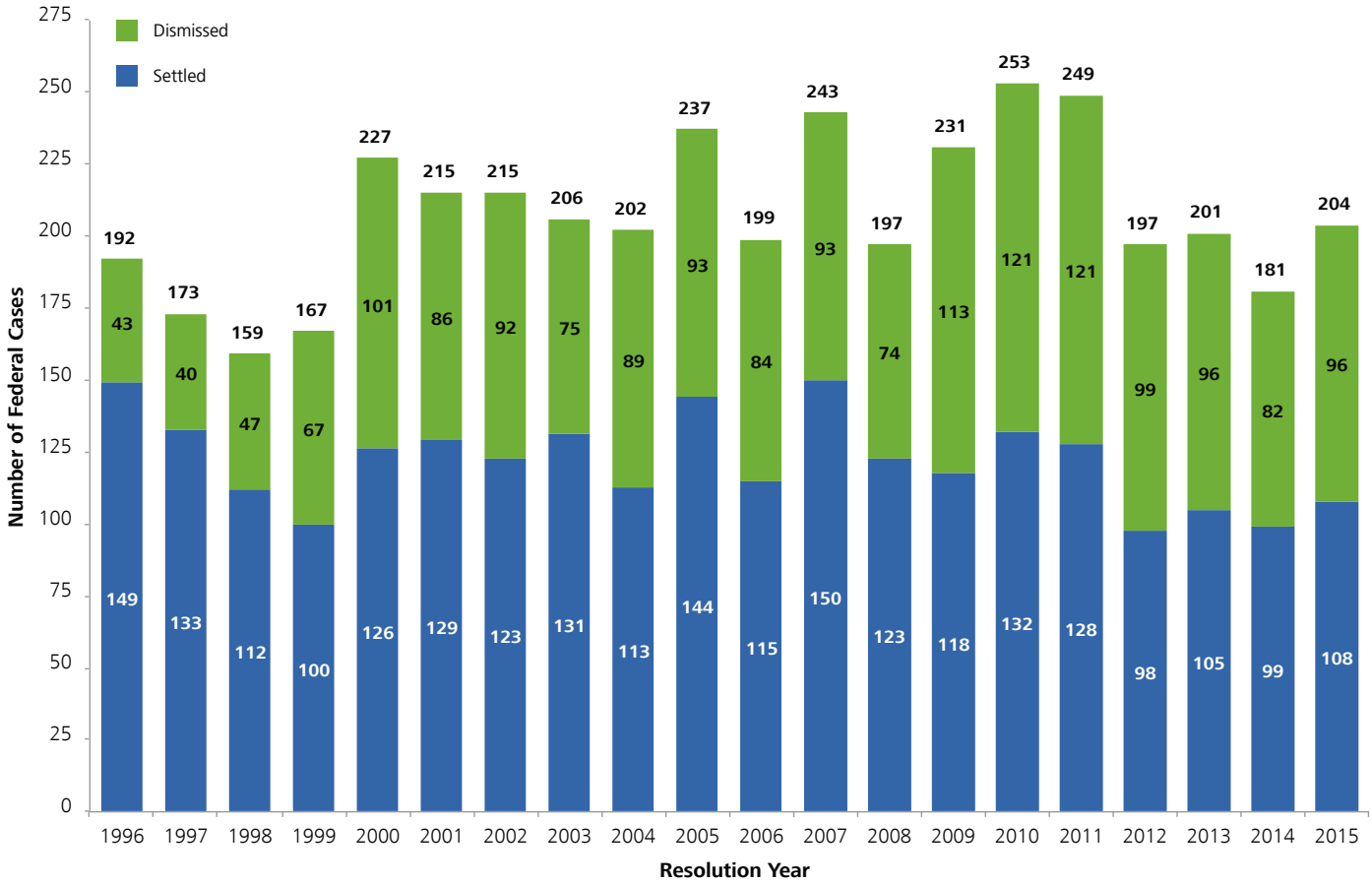
Trends in Case Resolutions

Number of Cases Settled or Dismissed

A total of 108 securities class actions settled in 2015, which is near the post-PSLRA lows seen over the past four years. See Figure 19. Despite having the highest number of settlements since 2011, there were 15% fewer settlements in 2015 than in 2011. Dismissals of securities cases have also been relatively low since 2011, but have increased over the last year. Ninety-six securities class actions were dismissed in 2015.

As we discuss below, the slowdown in the number of resolutions is primarily due to a lengthening of the time to case resolution, as opposed to a decline in the number of filings.

Figure 19. **Number of Resolved Cases: Dismissed or Settled**
January 1996–December 2015



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

Case Status by Year

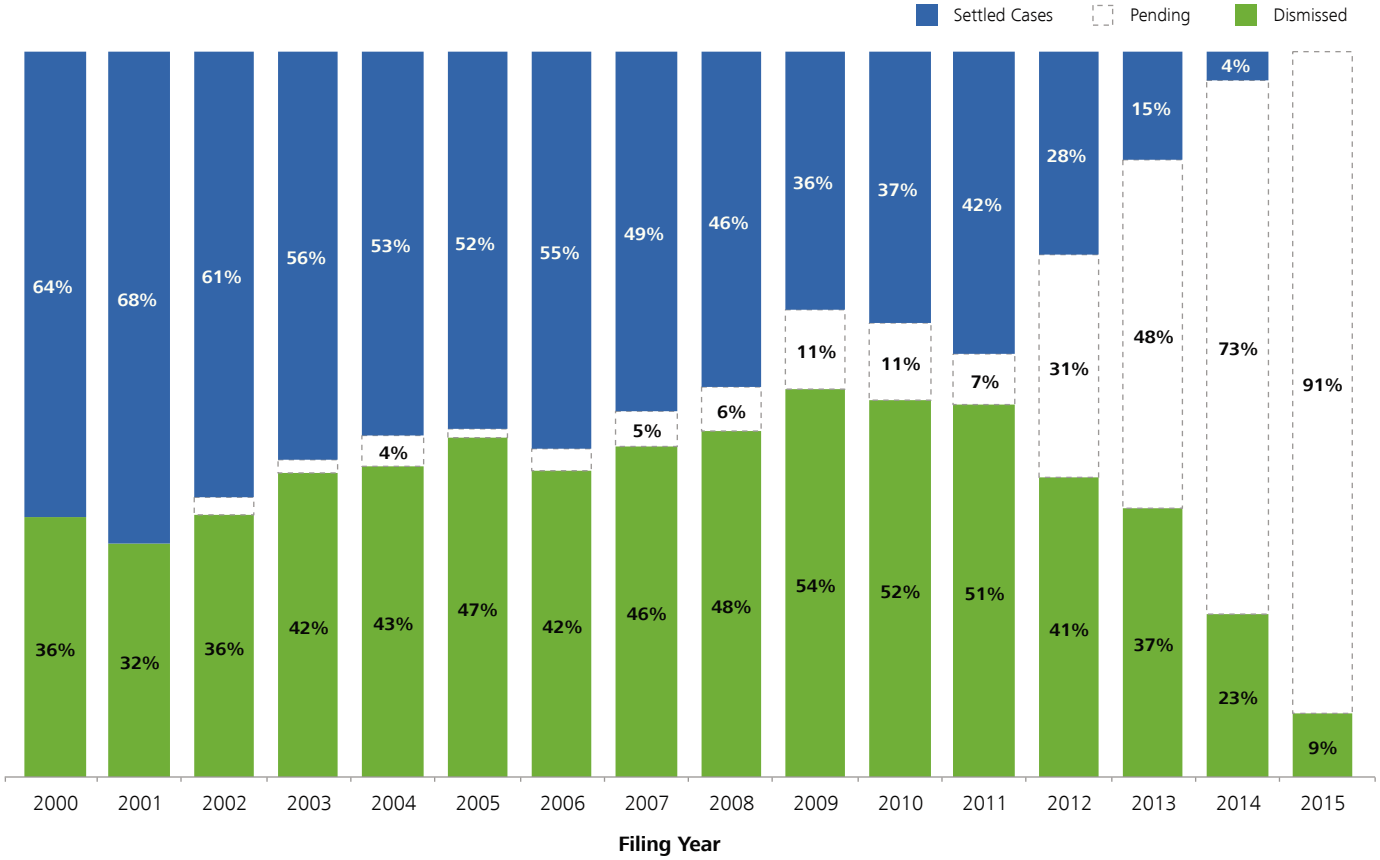
Figure 20 shows the rate of cases settled or dismissed, and the percent pending by filing year. These rates are calculated as the fraction of cases by current status out of all cases filed in a given year.

The rate of case dismissal has increased from around 35% for cases filed in 2000 through 2002 to around 42%-47% for cases filed in 2005 through 2007, and then to 51%-54% for cases filed in 2009 through 2011, when most of the credit crisis-related filings occurred. Nearly 90% of cases filed before 2012 have been resolved, providing evidence of longer-term trends about dismissal and settlement rates.

For more recent filings, we can look at the percent of cases that quickly resolve. We observe 9% of cases filed in 2015 were dismissed by the end of the year, in contrast to only 3% of cases filed and dismissed within calendar year 2014.[14] Of these, the number of voluntary dismissals more than tripled from four in 2014 to 13 in 2015.

While dismissal rates have been on a rising trend since 2000 at least up to 2011, two opposing factors make us cautious about drawing conclusions or forecasting how more recent cases may be resolved: the large fraction of cases awaiting resolution among those filed in recent years, and the possibility that recent dismissals will be successfully appealed or re-filed.

Figure 20. **Status of Cases as Percentage of Federal Filings by Filing Year**
January 2000–December 2015



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

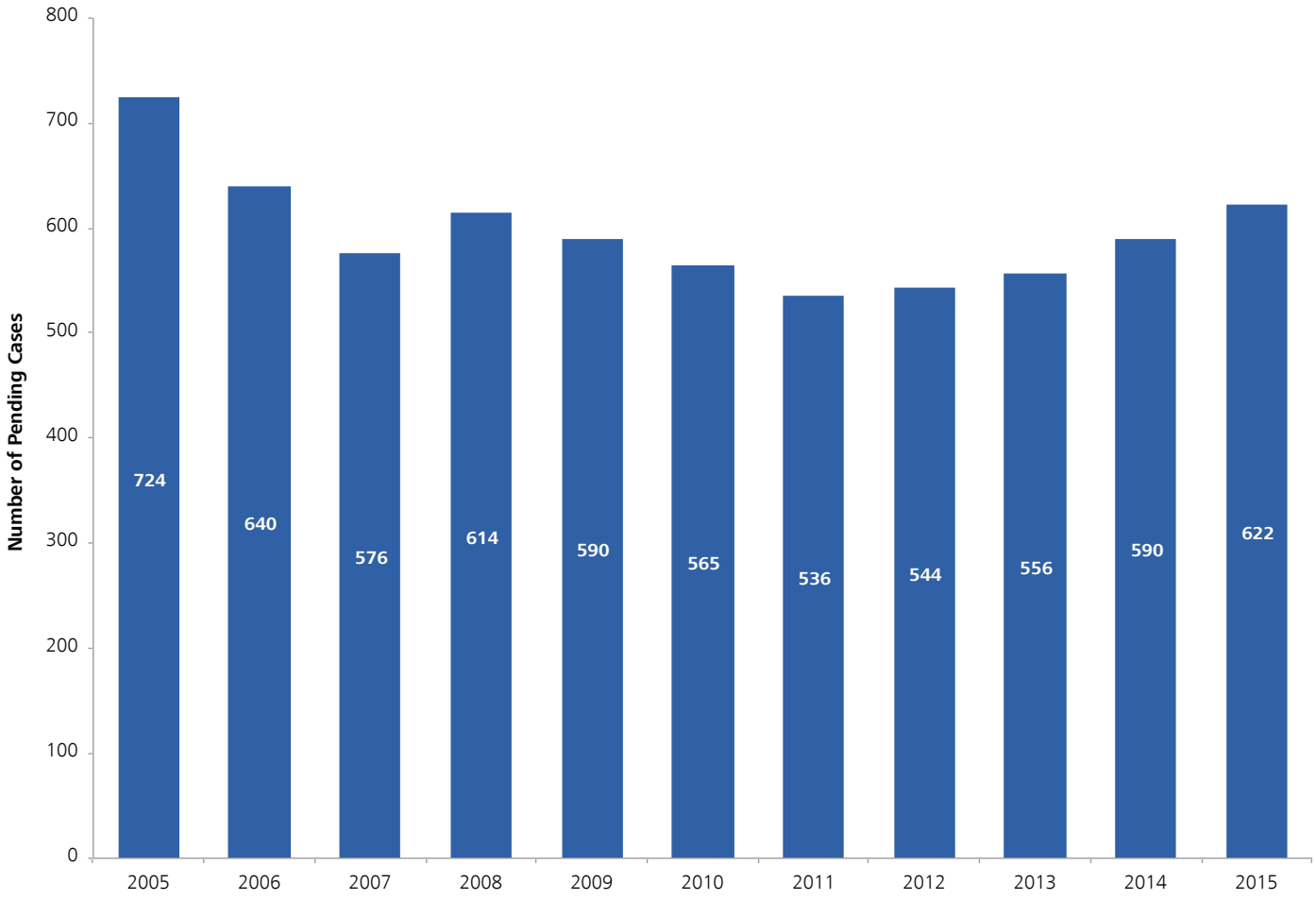
Number of Cases Pending

The number of securities class actions pending in the federal system decreased from 724 in 2005 to 536 in 2011. Since then, the number of pending cases has increased, reaching 622 in 2015, an increase of about 16% from the trough. See Figure 21.

Since cases are either pending or resolved, a decline in the number of filings or a lengthening of the time to case resolution also potentially contribute to changes in the number of cases pending. If the number of new filings is constant, the change in the number of pending cases can be indicative of whether times to case resolution are generally shortening or lengthening.

Given the relatively constant case filing rate until recently, the increase in pending cases since 2012 suggests that a slow-down of the resolution process over the period is the likely driver of the increase in pending claims.

Figure 21. **Number of Pending Federal Cases**
January 2005–December 2015



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

Time to Resolution

The term "time to resolution" denotes the time between filing of the first complaint and resolution (whether settlement or dismissal). Figure 22 illustrates the time to resolution for all securities class actions filed between 2001 and 2011, and shows that almost 40% of cases are resolved within two years of initial filing, and about 60% are resolved within three years.[15]

After grouping cases by filing year, Figure 23 shows the time it takes for 50% of cases filed each year to resolve, i.e., the median time to resolution. Except for increases in the median time to resolution following the 2000 dot-com bubble and the 2008 financial crisis, there has been a long-term downward trend in the median time to resolution. Over the first five years after the PSLRA went into effect, median time to resolution varied between 2.3 and 2.8 years. Over the 2008–2013 period, median time to resolution varied between 2.1 and 2.5 years. Much of this decline is due to shorter times to case settlement, as opposed to a shortening of the time it takes for cases to be dismissed.

Figure 22. **Time from First Complaint Filing to Resolution**
Cases Filed January 2001–December 2011

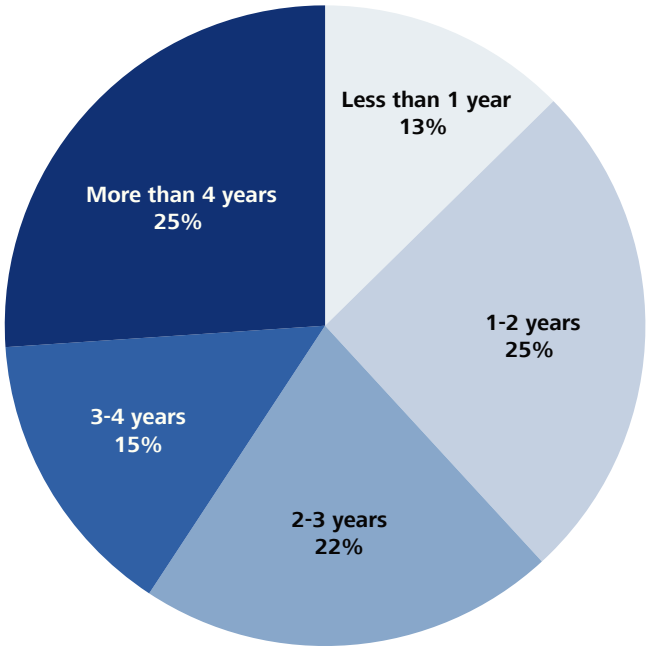
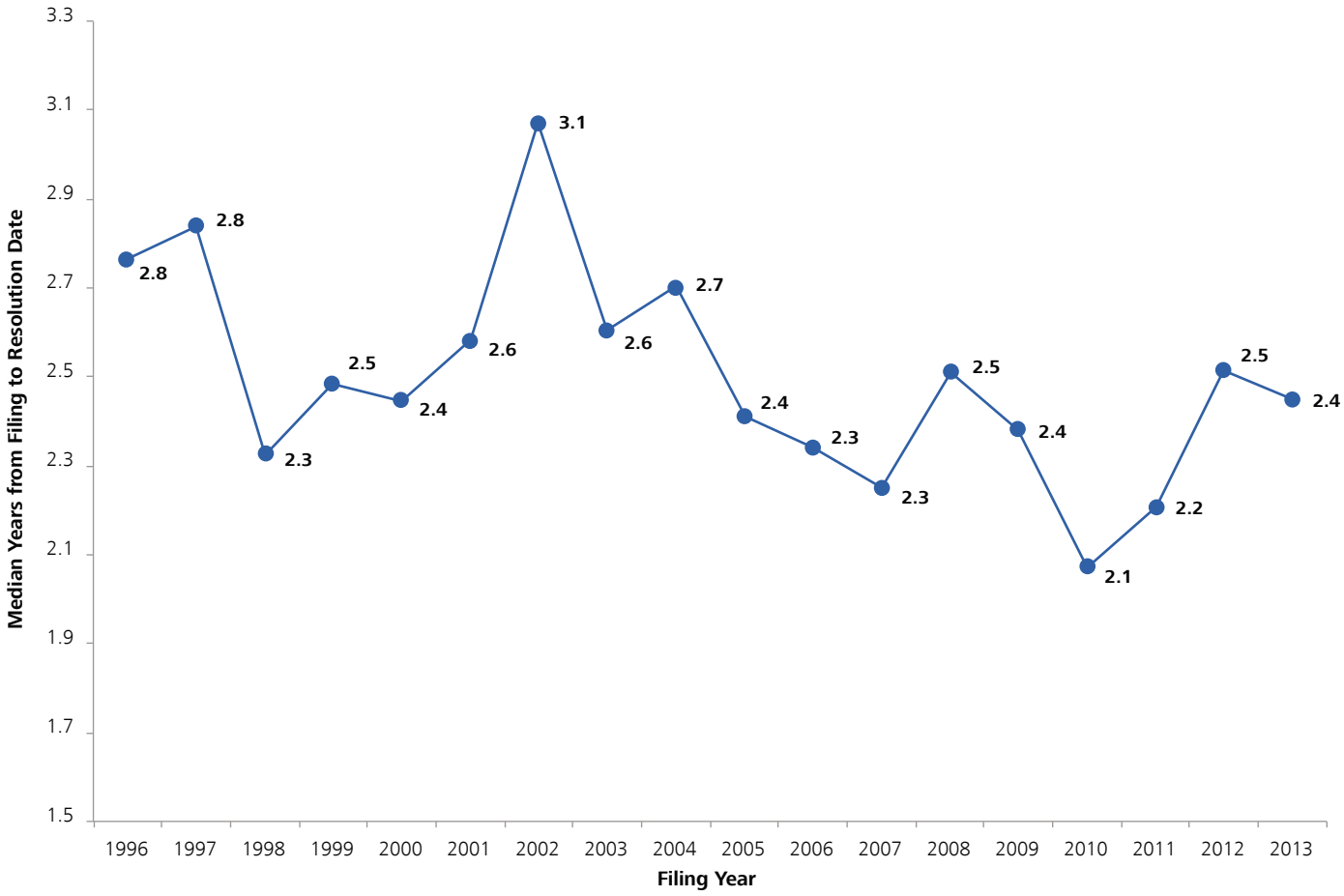


Figure 23. **Median Years from Filing of Complaint to Resolution of the Case**
Cases Filed January 1996–December 2013 and Resolved January 1996–December 2015



Trends in Settlements

We present several metrics regarding settlements in order to highlight attributes of cases that settled in 2015 and compare them with past years. We discuss two ways of measuring average settlement amounts and calculate the median settlement amount. Each calculation excludes IPO laddering cases, merger objection cases, and cases that settle with no cash payment to the class, as settlements of these less-usual cases may obscure trends in more typical cases.

The average settlement for 2015 reached $52 million, an increase of more than 46% over 2014. Excluding cases that settled for more than $1 billion dollars, the average settlement for 2015 was near the 2013 record high. The median 2015 settlement amount, which is more robust to extreme values, was $7.3 million and little changed from 2014.

The settlement of a number of large cases in 2015 affected the average settlement statistics. To illustrate how many cases settled over various ranges in 2015 versus past years, we provide a distribution of settlements over the past five years. To supplement this, we tabulate the 10 largest settlements of the year.

Average and Median Settlements

Average settlement amounts rebounded in 2015 and exceeded $52 million, an increase of 46% over 2014. See Figure 24. Excluding settlements that exceed $1 billion to remove extreme outliers, this approaches the record high of $54 million reached in 2013.

Figure 24. **Average Settlement Value ($Million)—Excluding Settlements over $1 Billion and Excluding IPO Laddering, Merger Objections, and Settlements for $0 to the Class**
January 1996–December 2015

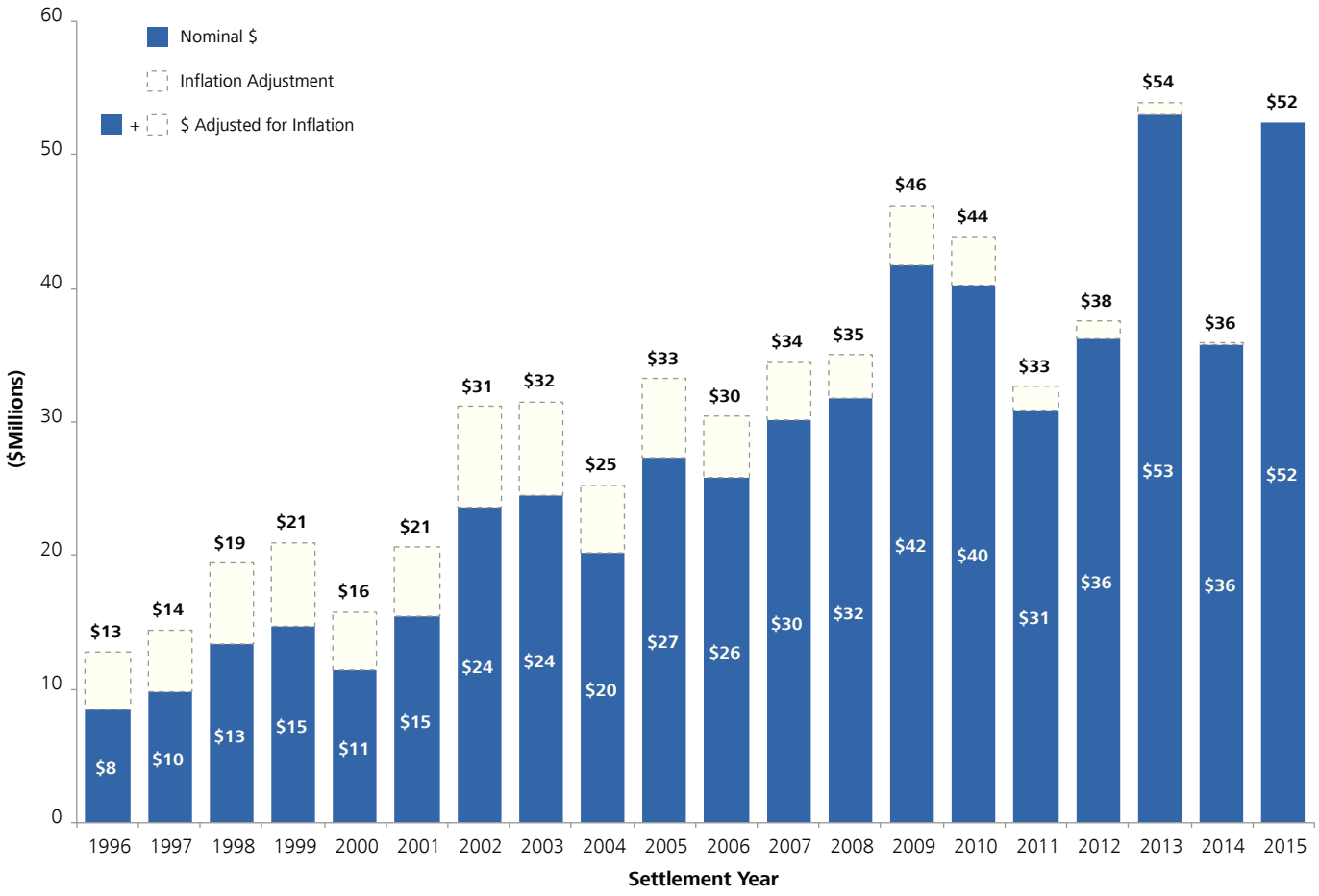
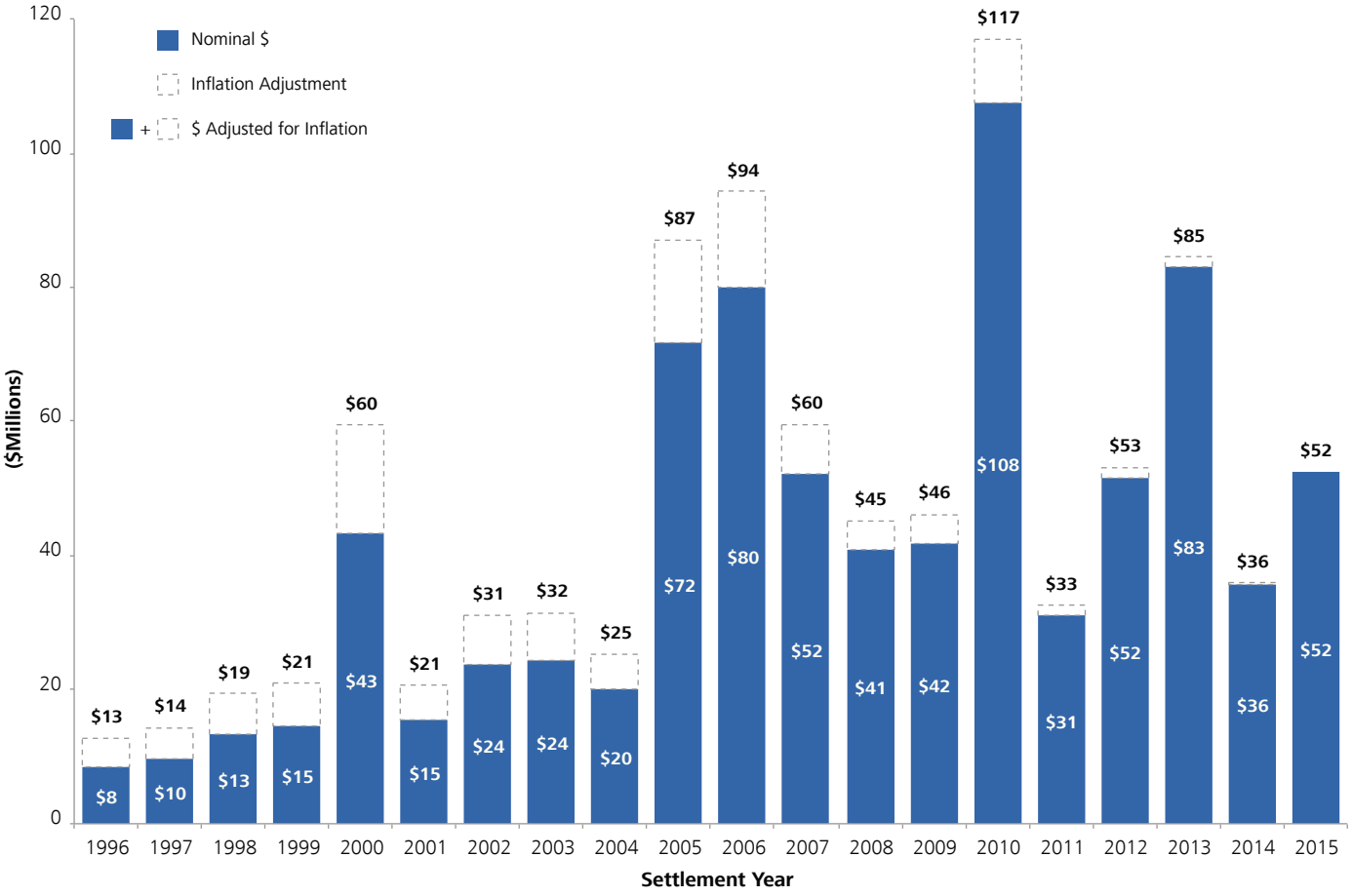


Figure 25 includes settlement amounts above $1 billion. In 2013, one settlement exceeding $1 billion was approved and pushed the overall average settlement amount to nearly $83 million. Over the past two years, on the other hand, no case settled for above $1 billion, so the average yearly settlement amounts for 2014 and 2015 are the same in both Figures.

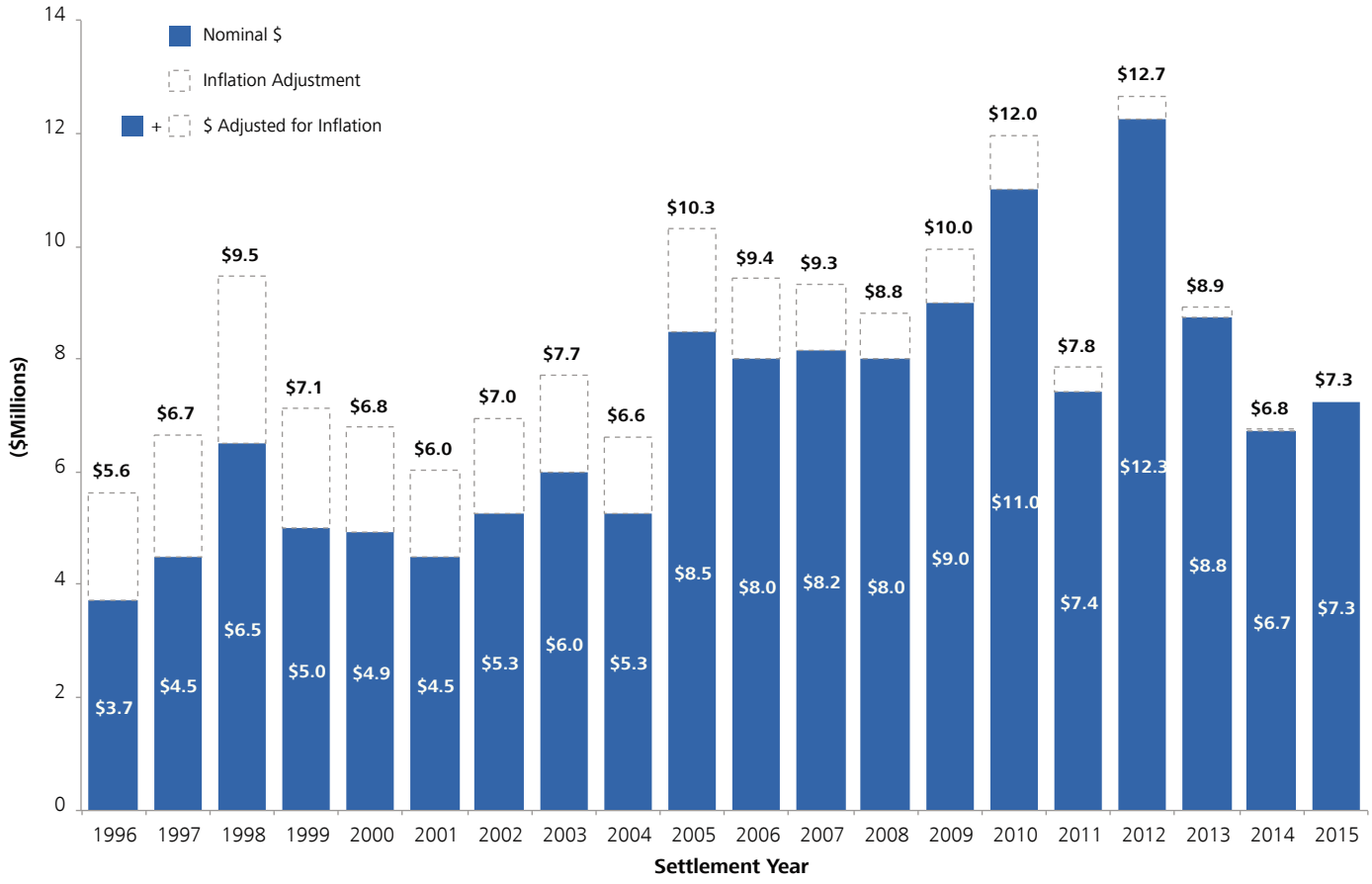
Figure 25. **Average Settlement Value ($Million)—Excluding IPO Laddering, Merger Objections, and Settlements for $0 to the Class**
January 1996–December 2015



The high 2015 average settlement amount was driven by multiple large settlements (each considerable, but less than the $1 billion threshold). On the other hand, cases have not become more expensive to settle across the board, as shown by analyzing median settlements. The median settlement amount, or the amount that is larger than half of the settlement values over the year, is much closer to that of 2014 and other years over the past decade. In 2015, the median settlement amount was $7.3 million, roughly equal to the 2014 median settlement. See Figure 26.

This year's average and median settlements reflect two different facets of settlement activity: a few large settlements drove the average up, while many small settlements kept the median stable.

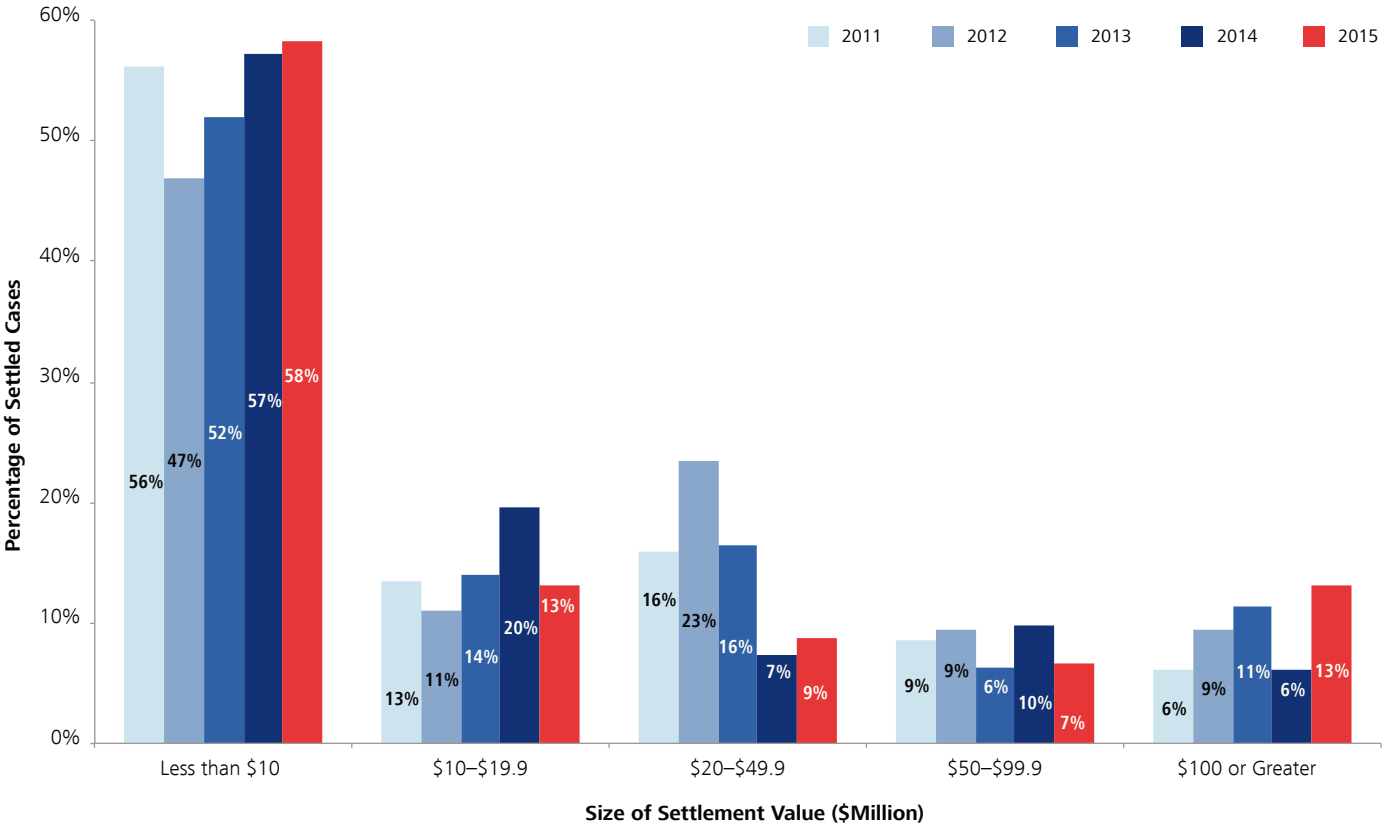
Figure 26. **Median Settlement Value ($Million)—Excluding IPO Laddering, Merger Objections, and Settlements for $0 to the Class**
January 1996–December 2015



Distribution of Settlement Amounts

The fraction of cases settled for less than $10 million or more than $100 million was larger in 2015 than in any year over the past five: 58% of the settlements were for amounts less than $10 million while 13% were for amounts greater than $100 million.[16] See Figure 27. The fraction of cases that settled for amounts in each of the intermediate ranges was at or near the lowest levels over the past five years.

Figure 27. **Distribution of Settlement Values—Excluding Merger Objections and Settlements for $0 to the Class**
January 2011–December 2015



The 10 Largest Settlements of Securities Class Actions of 2015

The 10 largest settlements of securities class actions in 2015 are shown in Table 1. Six out of the 10 largest settlements involved financial sector defendants and stemmed from litigation related to the financial crisis. These cases accounted for more than $2.9 billion out of about $5 billion in aggregate settlements (or about 60%) over the period. The largest, *American International Group, Inc.* (2008) (S.D.N.Y.), settled for $970.5 million, making up nearly one-fifth of total settled litigation during the year. The largest settlements of 2015 are dwarfed by past settlements. *Enron Corp.* settled for more than $7.2 billion in aggregate, while *Bank of America Corp.* settled for more than $2.4 billion in 2013 and was the largest financial sector settlement ever, per Table 2.

Table 1. **Top 10 Securities Class Action Settlements of 2015** (As of December 31, 2015)

Ranking	Case Name	Total Settlement Value ($MM)	Financial Institutions	Accounting Firms	Plaintiffs' Attorneys' Fees and Expenses	
			Value ($MM)	Value ($MM)	Value ($MM)	CC Related
1	American International Group, Inc. (2008)	$970.5	$0.0	$10.5	$122.5	1
2	Bear Stearns Mortgage Pass-Through Certificates	$500.0	n/a	No co-defendant	$88.0	1
3	Pfizer, Inc. (2010)	$400.0	No co-defendant	No co-defendant	$102.3	0
4	J.P. Morgan Acceptance Corp. I (Mortgage Pass-Through Certificates) (2009)	$388.0	No co-defendant	No co-defendant	$101.9	1
5	IndyMac Mortgage Pass-Through Certificates	$346.0	$340.0	No co-defendant	$45.0 [1]	1
6	RALI Mortgage (Asset-Backed Pass-Through Certificates)	$335.0	$235.0	No co-defendant	$75.0	1
7	The Bank of New York Mellon Corporation	$180.0	$0	No co-defendant	$48.0	0
8	Federal National Mortgage Association (Fannie Mae) (2008)	$170.0	$0	$0	$37.0	1
9	Duke Energy Corporation (2012) (W.D. N.C.)	$146.3	No co-defendant	No co-defendant	$35.9	0
10	Sprint Nextel Corporation (2009)	$131.0	No co-defendant	No co-defendant	$32.8	0
	Total	**$3,566.8**	**$575.0**	**$10.5**	**$688.2**	**0**

[1] Does not include litigation expenses.

Table 2. **Top 10 Securities Class Action Settlements** (As of December 31, 2015)

Ranking	Case Name	Settlement Years	Total Settlement Value ($MM)	Financial Institutions	Accounting Firms	Plaintiffs' Attorneys' Fees and Expenses
				Value ($MM)	Value ($MM)	Value ($MM)
1	ENRON Corp.	2003-2010	$7,242	$6,903	$73	$798
2	WorldCom, Inc.	2004-2005	$6,196	$6,004	$103	$530
3	Cendant Corp.	2000	$3,692	$342	$467	$324
4	Tyco International, Ltd.	2007	$3,200	No co-defendant	$225	$493
5	In re AOL Time Warner Inc.	2006	$2,650	No co-defendant	$100	$151
6	Bank of America Corp.	2013	$2,425	No co-defendant	No co-defendant	$177
7	Nortel Networks (I)	2006	$1,143	No co-defendant	$0	$94
8	Royal Ahold, NV	2006	$1,100	$0	$0	$170
9	Nortel Networks (II)	2006	$1,074	No co-defendant	$0	$89
10	McKesson HBOC, Inc.	2006-2008	$1,043	$10	$73	$88
	Total		**$29,764**	**$13,259**	**$1,040**	**$2,913**

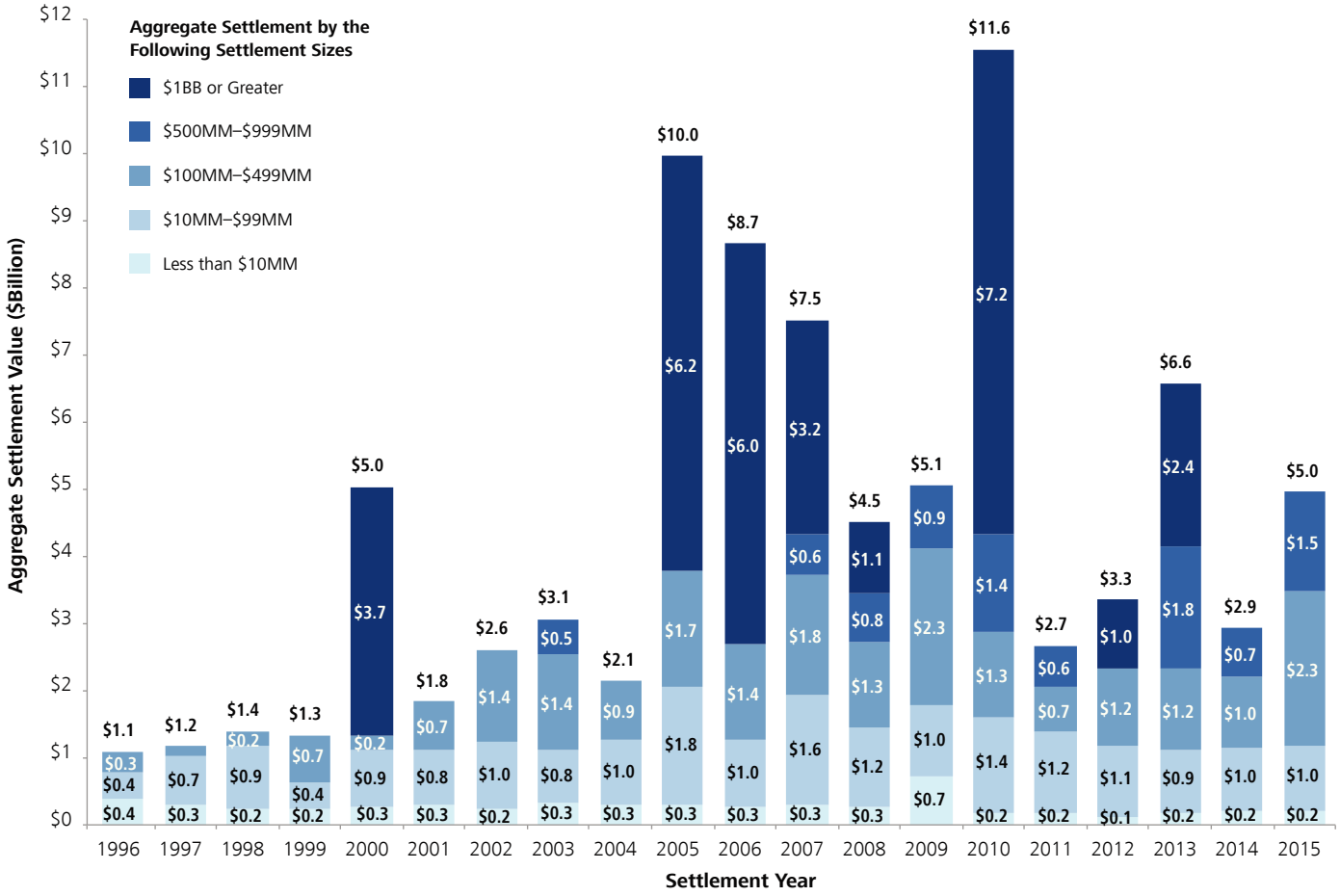
Aggregate Settlements

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

Aggregate settlements were about $5 billion in 2015, an increase from the $2.9 billion approved in 2014 but well short of the $6.6 billion in 2013, when multiple cases settled for more than $1 billion. Especially notable in 2015 was the aggregate settlement amount attributable to cases that settled for less than $1 billion, which approached the high seen in 2009.

Figure 28 reinforces the point noted above that much of the large fluctuation in aggregate settlements, especially since 2005, is driven by cases that settle for more than $1 billion. In contrast, settlements under $10 million, despite often accounting for the majority of settlements in a given year, account for a very small fraction of aggregate settlements.

Figure 28. **Aggregate Settlement Value ($Billion) by Settlement Size**
January 1996–December 2015



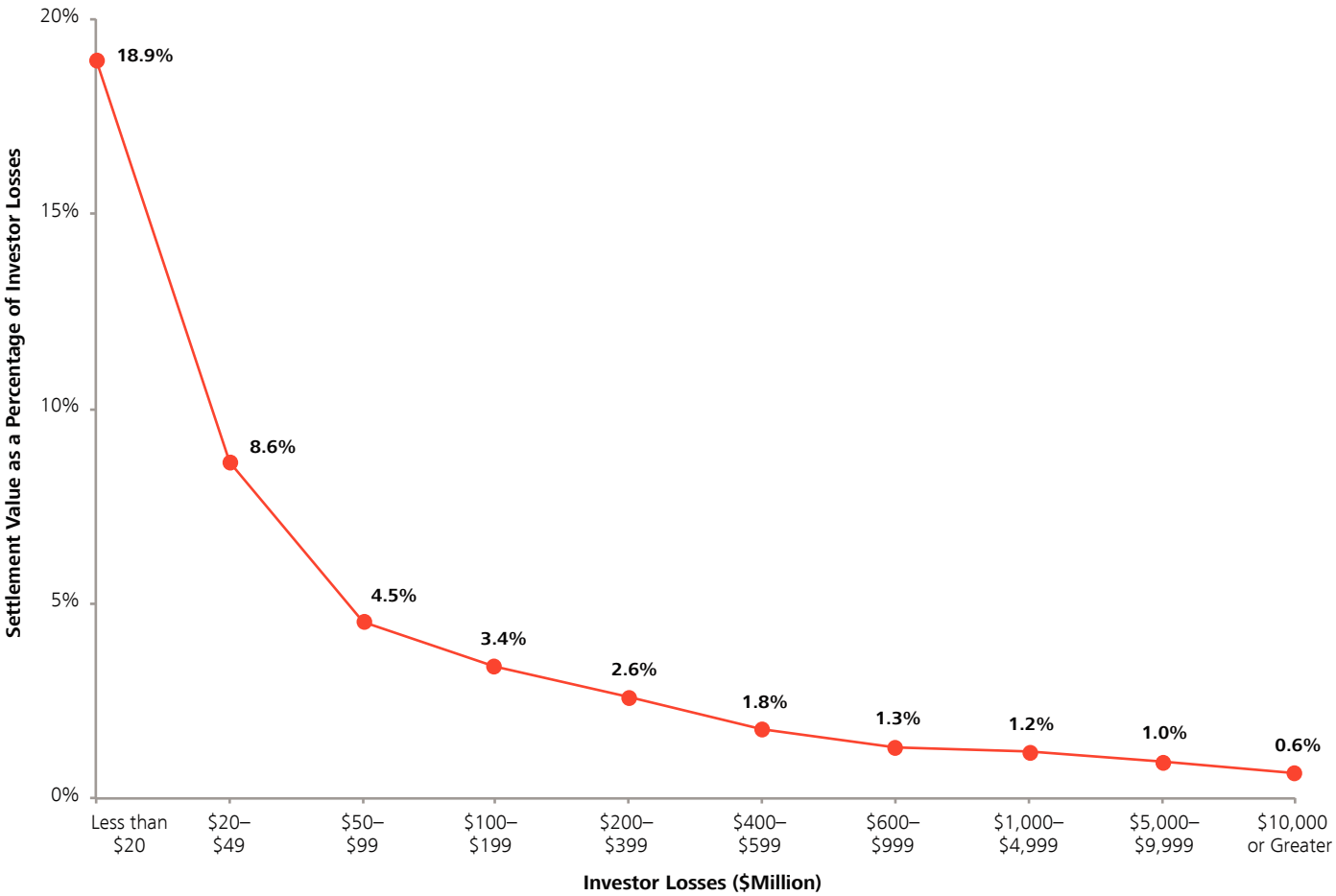
Investor Losses vs. Settlements

As noted above, our investor loss measure is a proxy for the aggregate amount that investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as investor losses grow, but the relation is not linear. Settlement size grows less than proportionately with investor losses, based on analysis of data from 1996 to 2015. Small cases typically settle for a higher fraction of investor losses (i.e., more cents on the dollar) than larger cases. For example, the median ratio of settlement to investor losses was 18.9% for cases with investor losses of less than $20 million, while it was 0.6% for cases with investor losses over $10 billion. See Figure 29.

Our findings about the ratio of settlement amount to investor losses should not be interpreted as the share of damages recovered in settlement, but rather as the recovery compared to a rough measure of the "size" of the case.

Figure 29. **Median of Settlement Value as a Percentage of Investor Losses—Excludes Settlements for $0 to the Class**
By Level of Investor Losses; January 1996–December 2015

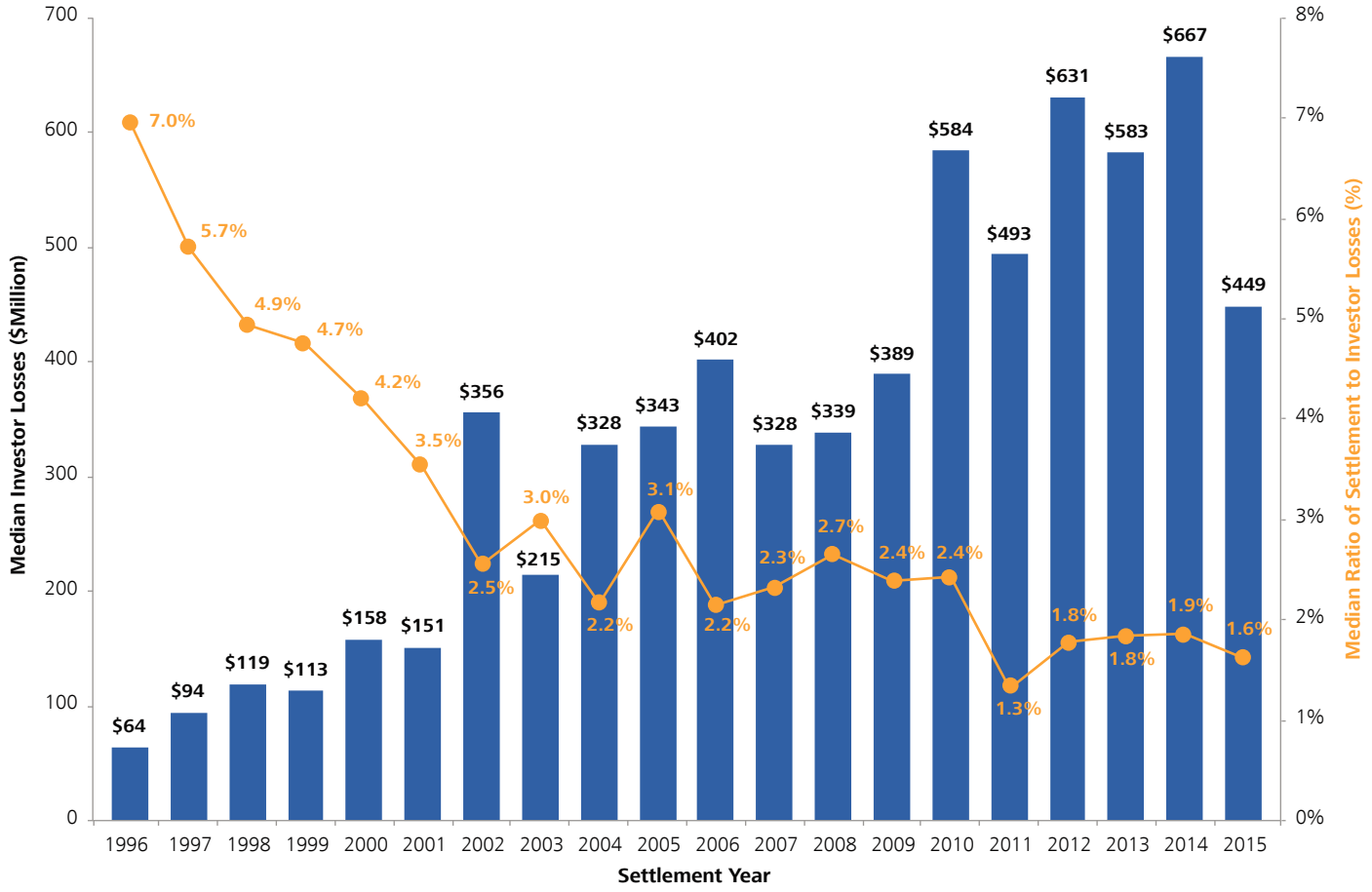


Median Investor Losses over Time

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

As shown in Figure 30, the median ratio of settlements to investor losses was 1.9% in 2014. For the latter half of the year, after the *Halliburton II* decision, the median ratio was only 1.4%, suggesting that cases settled for less.[17] This trend appears to have continued in 2015. The overall ratio was 1.6% in 2015, the second lowest percent in a decade, and coincided with a substantial decrease in median investor losses.

Figure 30. **Median Investor Losses and Median Ratio of Settlement to Investor Losses**
By Settlement Year; January 1996–December 2015



Explaining Settlement Amounts

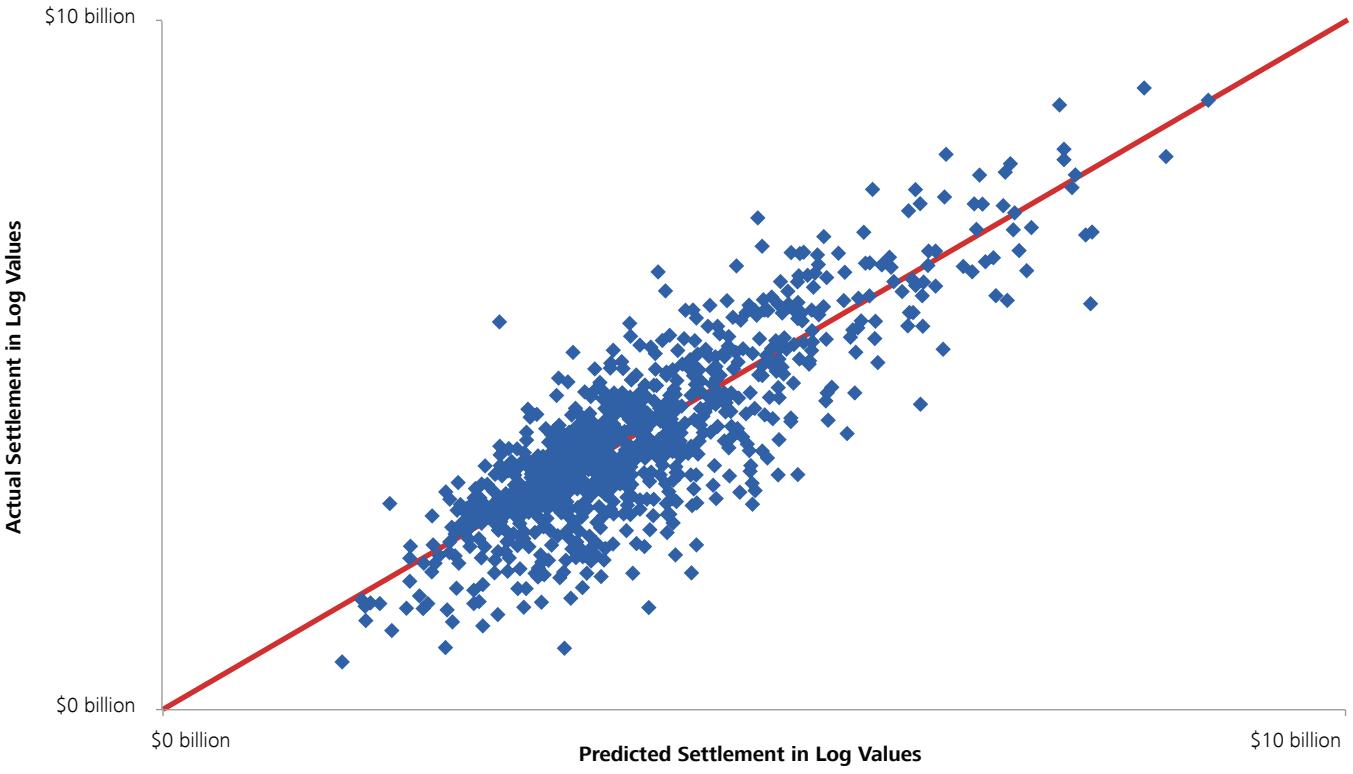
The historical relationship between case attributes and other case- and industry-specific factors can be used to measure the factors that are correlated with settlement amounts. NERA has examined settlements in over 1,000 securities class actions and identified key drivers of settlement amounts, many of which have been summarized in this report.

Generally, we find that the following factors have historically been significantly correlated with settlements:

- Investor losses (a proxy for the size of the case);
- The market capitalization of the issuer;
- Types of securities alleged to have been affected by the fraud;
- Variables that serve as a proxy for the "merit" of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- Admitted accounting irregularities or restated financial statements;
- The existence of a parallel derivative litigation; and
- An institution or public pension fund as lead plaintiff.

Together, these characteristics and others explain most of the variation in settlement amounts, as illustrated in Figure 31. Note that the two largest settlements are excluded from this figure.

Figure 31. **Predicted vs. Actual Settlements**



Plaintiffs' Attorneys' Fees and Expenses

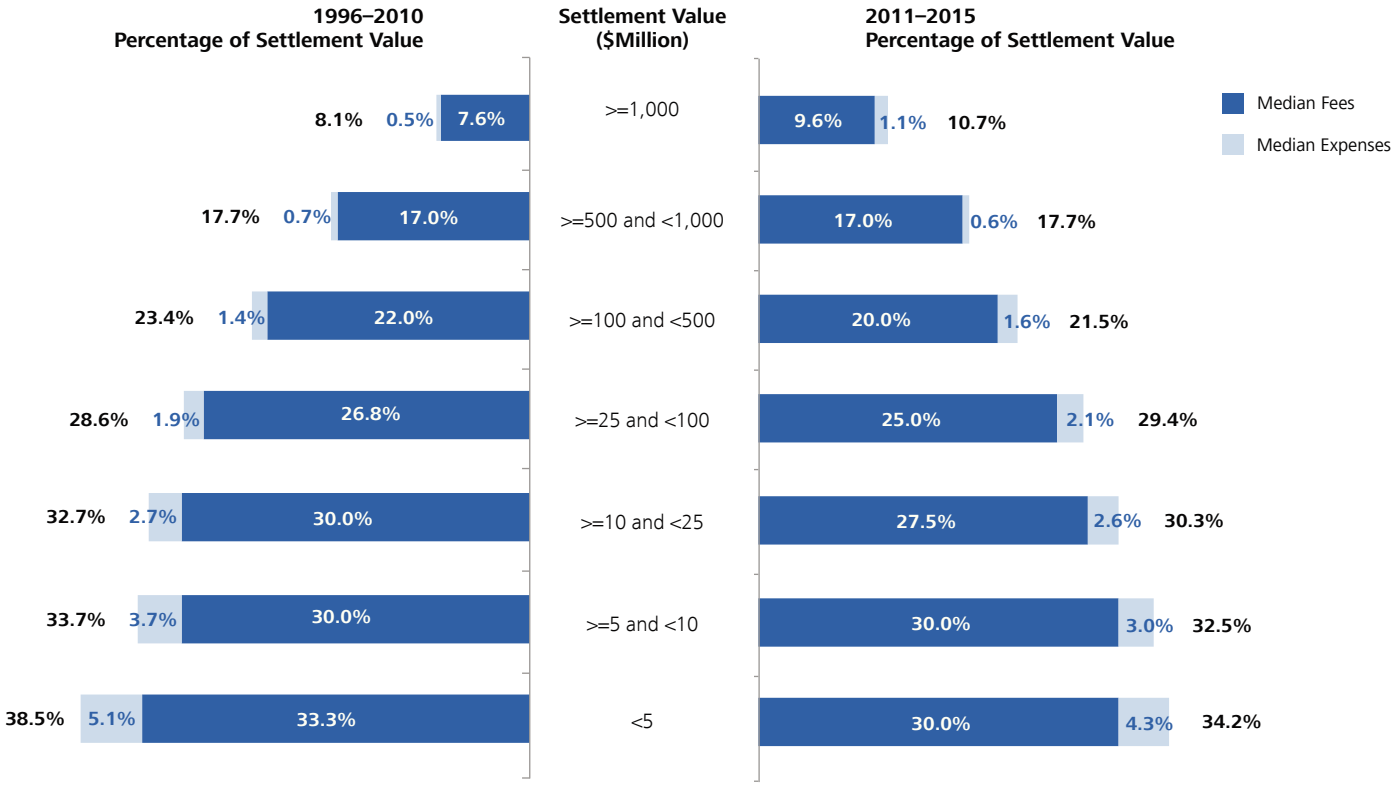
Usually, plaintiffs' attorneys' remuneration is determined as a fraction of any settlement amount in the forms of fees, plus expenses. Figure 32 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values over ranges of settlement amounts. The data shown in this Figure exclude settlements for merger objection cases and cases with no cash payment to the class.

Two patterns are evident in Figure 32: (1) typically, fees grow with settlement size but less than proportionally (i.e., the fee percentage shrinks as the settlement size grows), and (2) fee percentages have been decreasing over time, except for fees awarded on very large settlements.

First, to illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and report the median fee percentage for each group. While fees are stable at around 30% for settlements below $10 million, they clearly decline with settlement size.

Second, to illustrate that fee percentages have been decreasing over time (except for very large settlements), we report our findings both for the period 1996-2010 and for the period 2011-2015. The comparison shows that fee percentages have decreased or remained constant for settlements under $1 billion. For settlements above $1 billion, fee rates have increased.

Figure 32. **Median of Plaintiffs' Attorneys' Fees and Expenses, by Size of Settlement—Excludes Merger Objections, and Settlements for $0 to the Class**



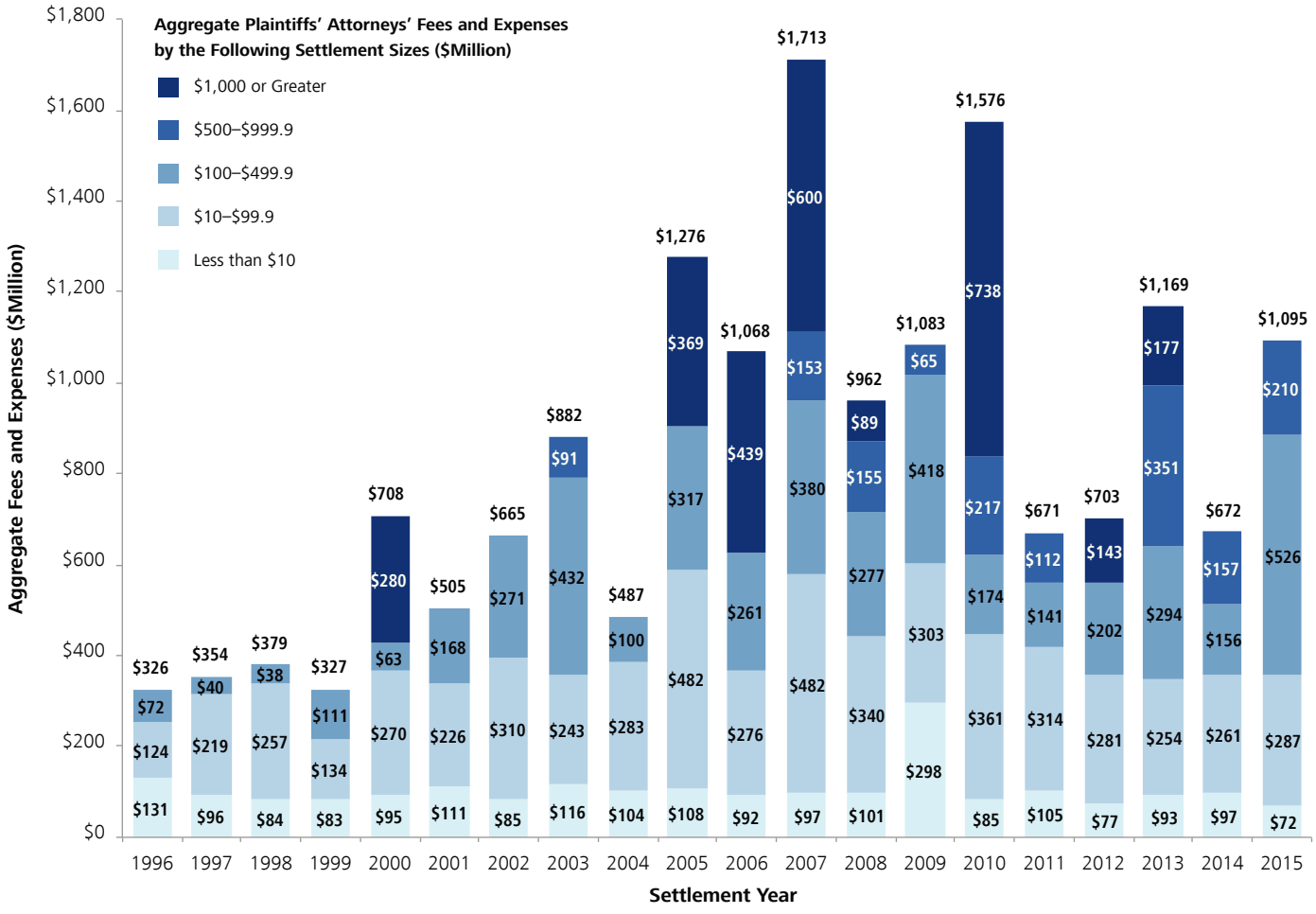
Aggregate Plaintiffs' Attorneys' Fees and Expenses

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

In 2015, aggregate plaintiffs' attorneys' fees and expenses were $1.095 billion, an increase of nearly 63% over 2014 and mirroring the increase in settlement amounts discussed earlier. See Figure 33. Settlements in 2015 generated the highest aggregate plaintiffs' fees and expenses for any year on record in which there were no settlements above $1 billion. This stemmed in part from the highest fees on record from cases settling for between $100 million and $500 million.

Note that this Figure differs from the other Figures in this section, because it includes in the aggregate those fees and expenses that plaintiffs' attorneys received for settlements in which no cash payment was made to the class.

Figure 33. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 1996–December 2015



Trials

Very few securities class actions reach the trial stage and even fewer reach a verdict. Table 3 summarizes the outcome for all federal securities class actions that went to trial among more than 4,300 that were filed since the PSLRA. Only 21 have gone to trial and only 15 have reached a verdict or a judgment.

No trials were held in 2015.

Table 3. **Post-PSLRA Securities Class Actions that Went to Trial** (As of December 31, 2015)

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

Note: Data are from case dockets and news.

Notes

[1] This edition of NERA's research on recent trends in securities class action litigation expands on previous work by our colleagues Lucy P. Allen, the late Frederick C. Dunbar, Dr. Vinita M. Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, Dr. David Tabak, and others. The authors also thank Dr. Plancich and Dr. Tabak for helpful comments on this edition. In addition, we thank Shadman Torofder and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this paper; all errors and omissions are ours.

[2] Data for this report are collected from multiple sources, including Institutional Shareholder Services Inc., complaints, case dockets, Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., SEC filings, and the public press.

[3] A recent study has attributed the decline in listings between 1997 through 2012 to a low rate of new firm listings and a high rate of delisting, the latter of which is explained by an unusually high rate of public company acquisitions. "NBER Working Paper "The U.S. listing gap," by Craig Doidge, G. Andrew Karolyi, and René M. Stulz, NBER Working Paper No. 21181, May 2015.

[4] Note that here we only consider merger objection cases as federal cases alleging violation of securities laws or cases that merely allege breach of fiduciary duty. Merger objection cases filed in state court, which can potentially be numerous, are not counted.

[5] "2015 Becomes the Biggest M&A Year Ever," *The Wall Street Journal*, December 3, 2015.

[6] Andrew Bolger, "Warning signs appear after bumper IPO year," *Financial Times*, 26 December 2014.

[7] Number of IPOs on US exchanges, excluding ADRs, from Mergerstat through FactSet Research Systems, Inc.

[8] For the purposes of this Figure, we considered only co-defendants listed in the first identified complaint. Based on past experience, accounting co-defendants were sometimes added to or excluded from later complaints.

[9] *Janus Capital Group, Inc., et al. v. First Derivative Traders* — (Docket No. 09-525).

[10] *Stoneridge Investment Partners v. Scientific-Atlanta, Inc*. — (Docket No. 06-43).

[11] An alternative possibility is that once detected, full disclosure is made earlier, turning what would have been a "partial disclosure" into a complete disclosure.

[12] "The SEC's Renewed Focus on Accounting Fraud, Insights and Implications for Auditors and Public Companies," *The CPA Journal*, February 2014.

[13] "SEC's New Whistleblower Program Take Effect Today," US Securities and Exchange Commission, 21 August 2011.

[14] NERA Working Paper, "Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review; Settlement amounts plummet in 2014, but post-*Halliburton II* filings rebound," by Svetlana Starykh et al, 20 January 2015, at http://www.nera.com/publications/archive/2015/recent-trends-in-securities-class-action-litigation--2014-full-y.html.

[15] Each of these analyses excludes IPO laddering cases and merger objection cases because the former usually take much longer to resolve and the latter usually much less time to resolve.

[16] These settlements exclude those in merger objection cases and in cases that settled with no cash payment to the class.

[17] NERA Working Paper "Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review; Settlement amounts plummet in 2014, but post-*Halliburton II* filings rebound," by Svetlana Starykh et al, 20 January 2015, at http://www.nera.com/publications/archive/2015/recent-trends-in-securities-class-action-litigation--2014-full-y.html.

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