



Securities Class Action Filings at an All-Time High

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One reason for the increased federal filings is the apparent shift of merger and acquisitions (M&A) suits out of Delaware state court and into federal court. In January 2016, the Delaware Court of Chancery in *In re Trulia, Inc. Stockholder Litigation* announced that it would generally no longer approve “disclosure only” settlements in merger objection lawsuits. In *Trulia* and similar cases, the Chancery Court expressed its disdain for such settlements, which often involve threats by plaintiffs to enjoin a merger followed by quick settlements that award fees to the plaintiffs’ attorneys while precluding future litigation on the merger with only nominal benefits to the stockholders through added disclosures.

Since the *Trulia* decision, M&A filings have been on the rise in federal courts. In the 3rd Circuit alone, there were 23 M&A filings in the first half of 2017. That is more than all 3rd Circuit M&A filings from 2009 through 2015 combined. The U.S. District Court of Delaware was the leading contributor to this increase, accounting for 16 M&A filings, the most such filings of any district court in the first half of 2017.

However, even discounting this increase in M&A litigation, the first six months of 2017 still saw more securities class action filings than any other six-month period. In fact, every industry experienced an increase in filings in the first half of 2017 compared to the previous six-month period, as well as the historical average. The largest contributor was the Consumer Non-Cyclical sector, which consists primarily of cases involving biotechnology, pharmaceuticals and health care companies. There were 85 filings in that sector in the first half of 2017, compared to 66 in the second half of 2016, and a historical average of 25 per half from 1997-2016. Filings against non-U.S. companies also appear to be on the rise.

In addition to having the most securities class action filings on record, the first half of 2017 also had the fastest filings. In the first six months of 2017, the “median filing lag” was only eight days for non-M&A filings. This period refers to the number of days between the end of a class period and the filing date of the securities class action. The median filing lag period for non-M&A cases has generally been shortening since the first half of 2012, when it was 45 days. The 2017 median lag period has been the quickest yet at eight days.

The Cornerstone report comes on the heels of another recent report by Securities Class Action Services naming 2016 as the biggest year ever for U.S. securities class action settlements. While that trend may continue in the near future due to previously filed cases, the first half of 2017 saw proportionately fewer “mega” cases compared to 2016 and other prior years. Filings in the first half of 2017 also have noticeably lower median disclosure dollar losses and maximum dollar losses per filing, which indicates a generally lower amount in controversy per case. Accordingly, the historically high filing numbers in 2017 appear to be driven by relatively smaller cases.

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