

CORNERSTONE RESEARCH

# Securities Class Action Settlements

2010 Review and Analysis

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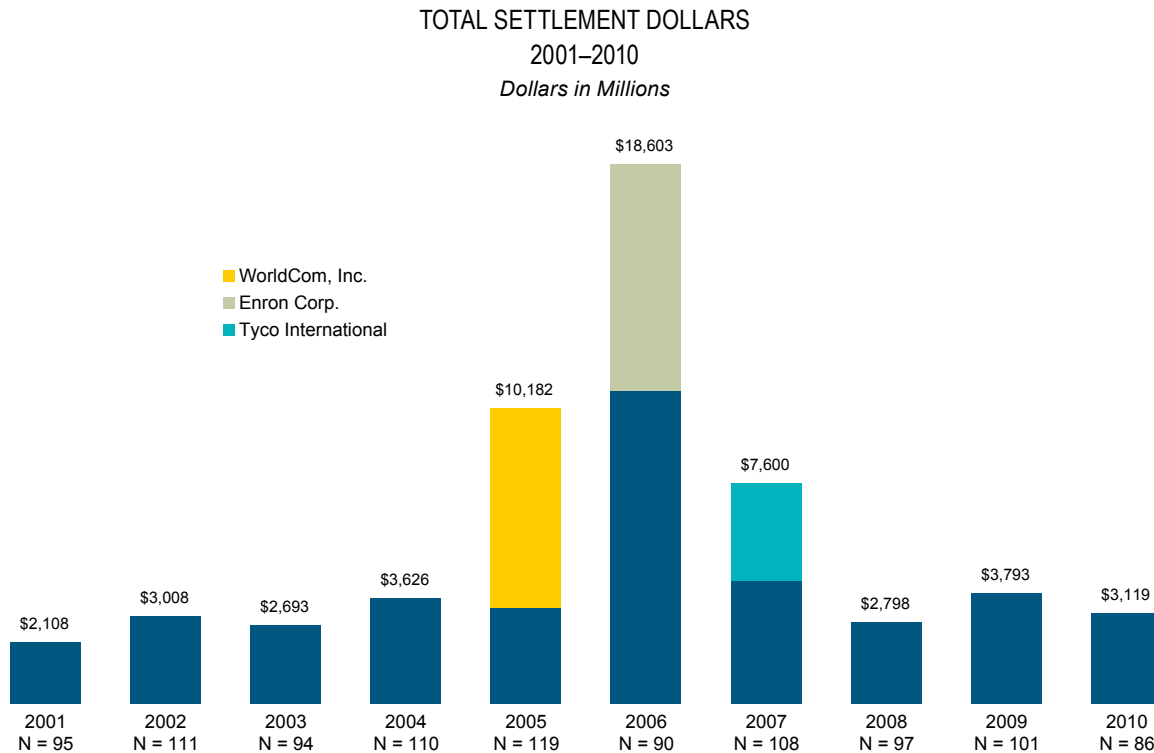
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## INTRODUCTION

The number of Private Securities Litigation Reform Act (Reform Act) settlements approved in 2010 was the lowest in more than 10 years. In 2010 there were 86 court-approved securities class action settlements, involving \$3.1 billion in total settlement funds. The number of settlements approved in 2010 decreased by approximately 15 percent compared with 2009, and the dollar value of these settlements declined by more than 17 percent, from \$3.8 billion in 2009 to \$3.1 billion in 2010.<sup>1</sup>

Figure 1



Settlement dollars adjusted for inflation; 2010 dollar equivalent figures shown.

This report highlights these findings and provides further detail on settlement summary statistics, the methods used to estimate damages, the state of credit-crisis-related settlements, and an analysis of case characteristics. This report draws upon and updates information provided in our previous reports. Our research sample includes more than 1,200 securities class actions settled from 1996 through 2010. Cases in our sample are limited to those involving allegations of fraudulent inflation in the price of a corporation's common stock. These settlements are identified by RiskMetric Group's Securities Class Action Services (SCAS).<sup>2</sup> In our study, the designated settlement year corresponds to the year in which the hearing to approve the settlement was held. Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.<sup>3</sup>

## CASES SETTLED IN 2010

In contrast to the declining trend in the number and total value of settlements in 2010, the median settlement amount for cases settled in 2010 increased to \$11.3 million from \$8.0 million reported in 2009. This represents a year-over-year increase of more than 40 percent. Not only is this the largest percentage increase in the median settlement amount in the last 10 years, it is also the first time during that same period that the median settlement amount, even when adjusted for inflation, exceeded \$10 million.

Conversely, the average settlement amount decreased slightly from \$37.2 million reported in 2009 to \$36.3 million in 2010 and remains substantially below the average of \$54.8 million for all post-Reform Act settlements through 2009. If we exclude the top three post-Reform Act settlements illustrated in Figure 1 (WorldCom, Enron, and Tyco) from this analysis, the average settlement amount of \$36.3 million in 2010 is still lower than the resulting historical average of \$38.8 million for cases settled from 1996 through 2009.

Figure 2

### SETTLEMENT SUMMARY STATISTICS

*Dollars in Millions*

	2010	Through 2009
Minimum	\$0.5	\$0.1
Median	\$11.3	\$7.6
Average	\$36.3	\$54.8
Maximum	\$624.0	\$7,822.8
Total Amount	\$3,118.5	\$61,575.1

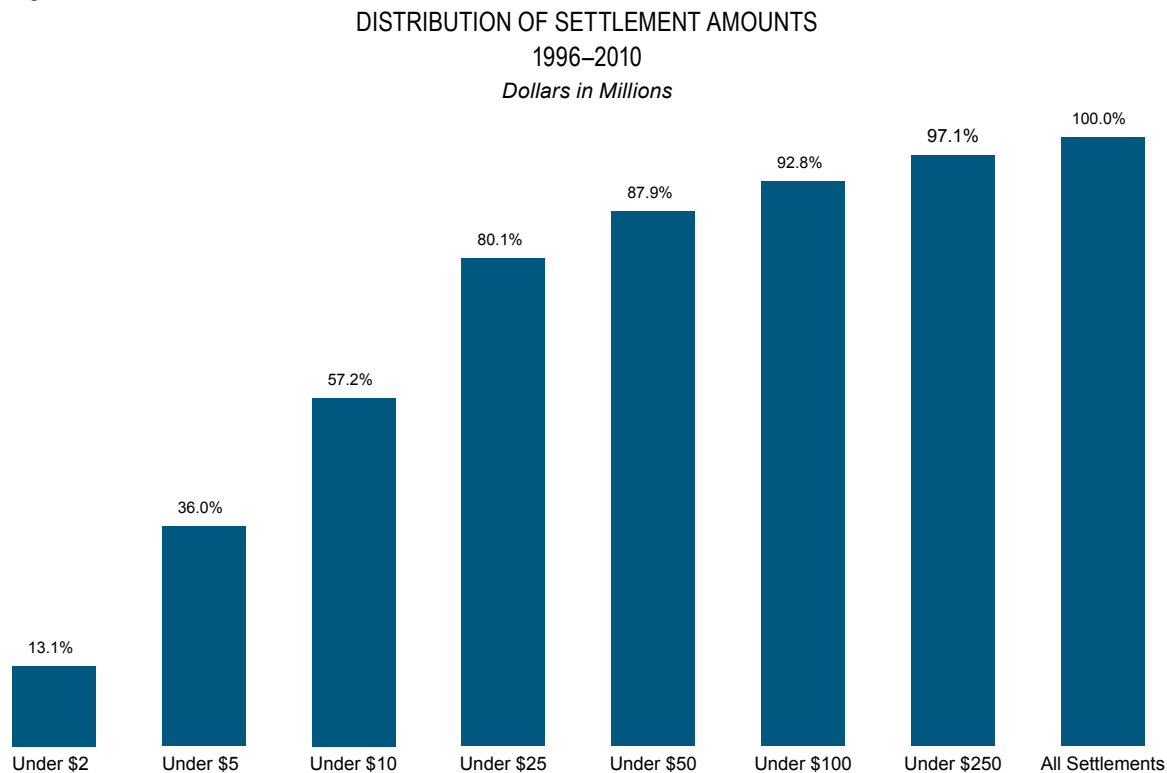
Settlement dollars adjusted for inflation; 2010 dollar equivalent figures shown. Excluding the top three settlements illustrated in Figure 1, the average and total values are \$38.8 million and \$43,509.9 million, respectively, for all settlements through 2009.

The decline in the 2010 average settlement is due to a decline in very large settlements. For the third consecutive year, in 2010 no single securities class action settlement exceeded \$1 billion, and the average of the top five “mega-settlements” in 2010 (settlements in excess of \$100 million) declined more than 30 percent from the average for 2009 mega-settlements.

Continuing a trend observed in our prior year's report, the average length of time from case filing to settlement approval increased to 4.1 years for cases settled in 2010 compared to 3.9 years for cases settled in 2009. The greatest number of cases settled in 2010 involved firms operating in the telecommunications and technology sectors, which had 16 and 17 cases, respectively. There were 11 settlements related to issuers in the finance sector in 2010, down from 18 cases in 2009. Median settlement values for this sector were the highest—\$31.3 million—compared with other identified sectors in our study, and the technology sector held the second spot with a median settlement amount of \$20 million. Overall, while a relatively low number of cases have settled to date from among the nearly 200 class actions identified as being related to the credit crisis,<sup>4</sup> the relatively high median settlement value for the finance sector was due in large part to such cases. See page 12 for additional discussion of credit-crisis-related actions.

Notwithstanding the increase in the median settlement amount to more than \$11 million in 2010, across all post-Reform Act settlements, more than half of the cases have settled for less than \$10 million (see Figure 3). Approximately 80 percent of post-Reform Act cases have settled for less than \$25 million, and only 7 percent of cases have settled for more than \$100 million.<sup>5</sup> Thus, while large settlements tend to receive substantial attention, they occur infrequently.

Figure 3



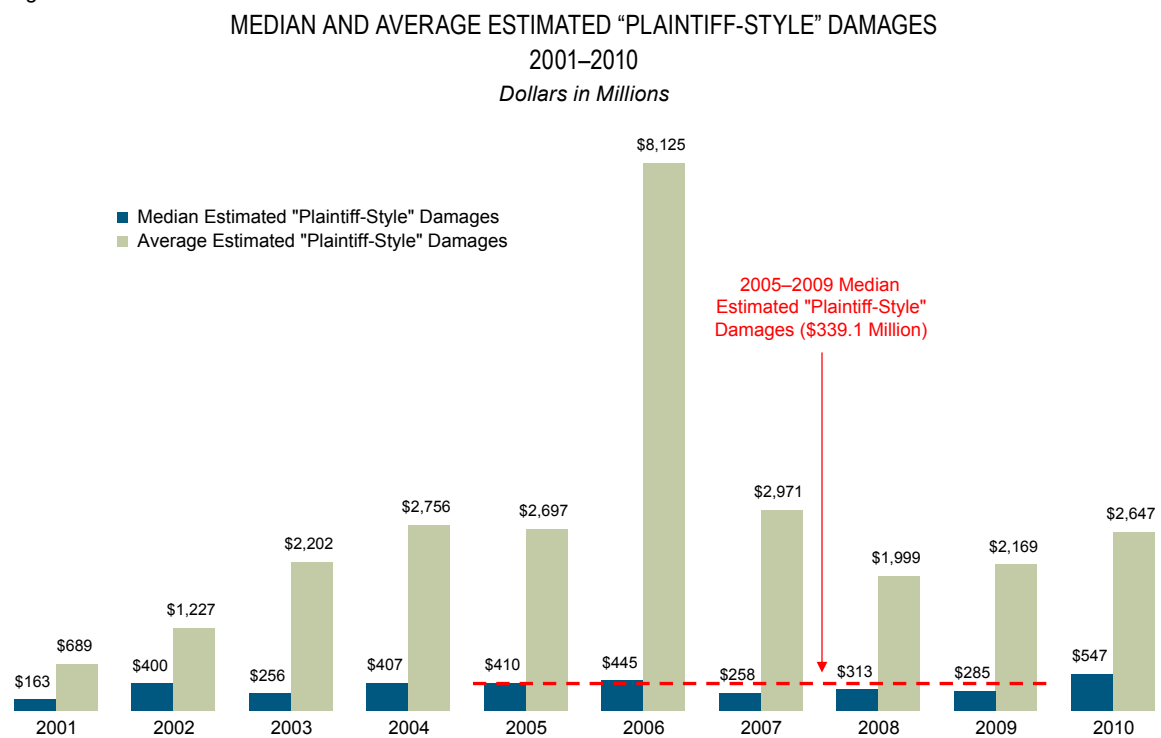
Settlement dollars adjusted for inflation; 2010 dollar equivalent figures shown.

## SETTLEMENTS AND “DAMAGES ESTIMATES”

For purposes of our research, we use a highly simplified approach to estimate so-called “plaintiff-style” damages, which is based on a modified version of a calculation method historically used by plaintiffs in securities class actions.<sup>6</sup> We make no attempt to link these simplified calculations of shareholder losses to the allegations included in the associated court pleadings. Accordingly, we do not intend for any damages estimates presented in this report to be indicative of actual economic damages borne by shareholders. While various models and alternative calculations could be used to assess defendants’ potential exposure in securities class actions, our application of a consistent method allows us to identify and examine certain trends in estimated “plaintiff-style” damages.<sup>7</sup>

For cases settled in 2010, median estimated “plaintiff-style” damages increased more than 60 percent from the median over the previous five years. This represents the highest median estimated “plaintiff-style” damages reported for all post–Reform Act years.

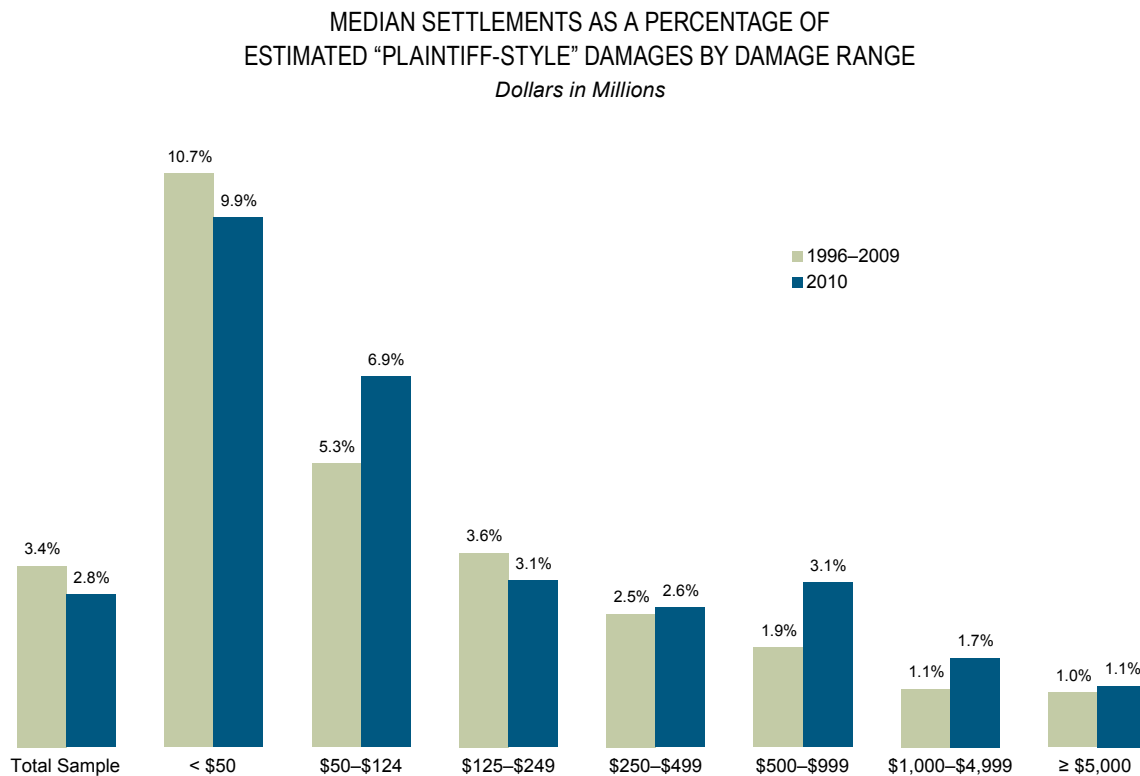
Figure 4



While a number of observable factors contribute to settlement outcomes, our research continues to support that the most important factor in explaining settlement amounts is estimated “plaintiff-style” damages. Accordingly, considering the increase in the median settlement amount for 2010, it is not surprising that median estimated “plaintiff-style” damages also increased in 2010, as observed in Figure 4.

As we have described in prior reports, settlements generally increase as “plaintiff-style” damages increase; however, settlements as a *percentage* of estimated “plaintiff-style” damages generally decrease as damages increase (see Figure 5). This is particularly true for very large cases.

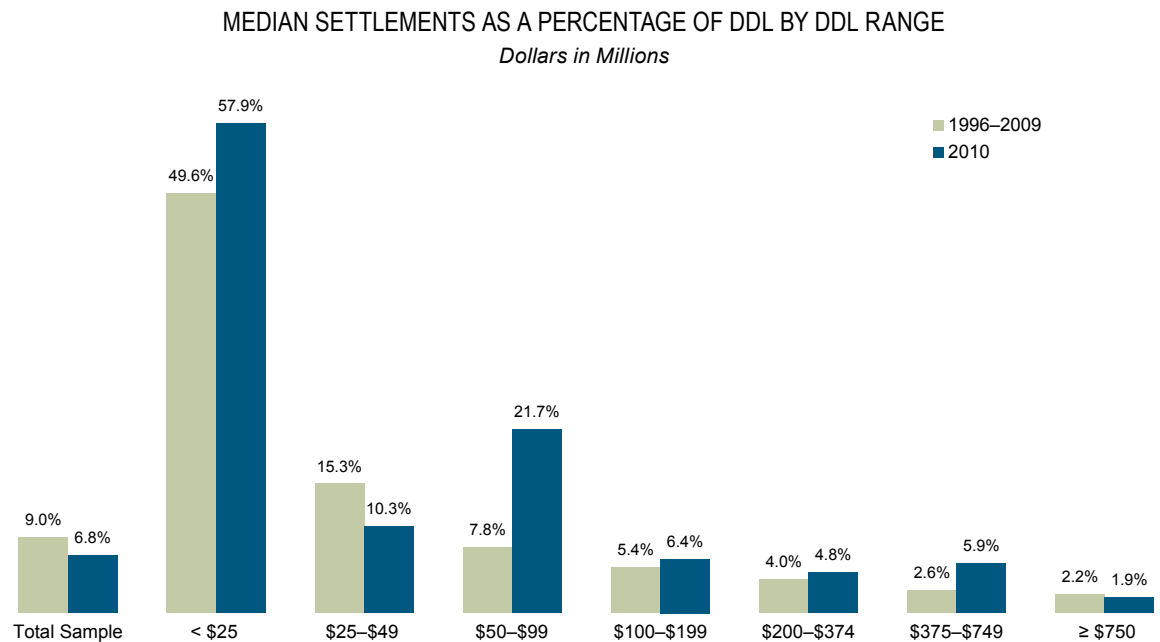
Figure 5



Disclosure Dollar Loss (DDL) is another simplified measure of shareholder losses. DDL is calculated as the decline in the market capitalization of the defendant firm from the trading day immediately preceding the end of the class period to the trading day immediately following the end of the class period.<sup>8</sup> As in the case of estimated “plaintiff-style” damages, we do not attempt to link DDL to the allegations included in the associated court pleadings. Thus, as this measure does not isolate movements in the defendant’s stock price that are related to case allegations, it is not intended to represent an estimate of damages. Nor does this measure capture additional stock price declines during the alleged class period that may affect certain purchasers’ potential damages claims. The DDL calculation also does not apply a model of investors’ share-trading behavior to estimate the number of shares damaged.<sup>9</sup>

Following a trend observed in recent years, the median inflation-adjusted DDL associated with settled cases increased to \$158.1 million in 2010, representing more than a 10 percent increase from 2009. Consistent with the pattern discussed earlier in this report regarding estimated “plaintiff-style” damages, we find that settlements as a percentage of DDL generally decline as DDL increases. Reflecting this finding, the increase in median DDL in 2010 was accompanied by a decrease in median settlement values as a percentage of DDL (6.8 percent in 2010 compared with 9.0 percent from 1996 through 2009).

Figure 6

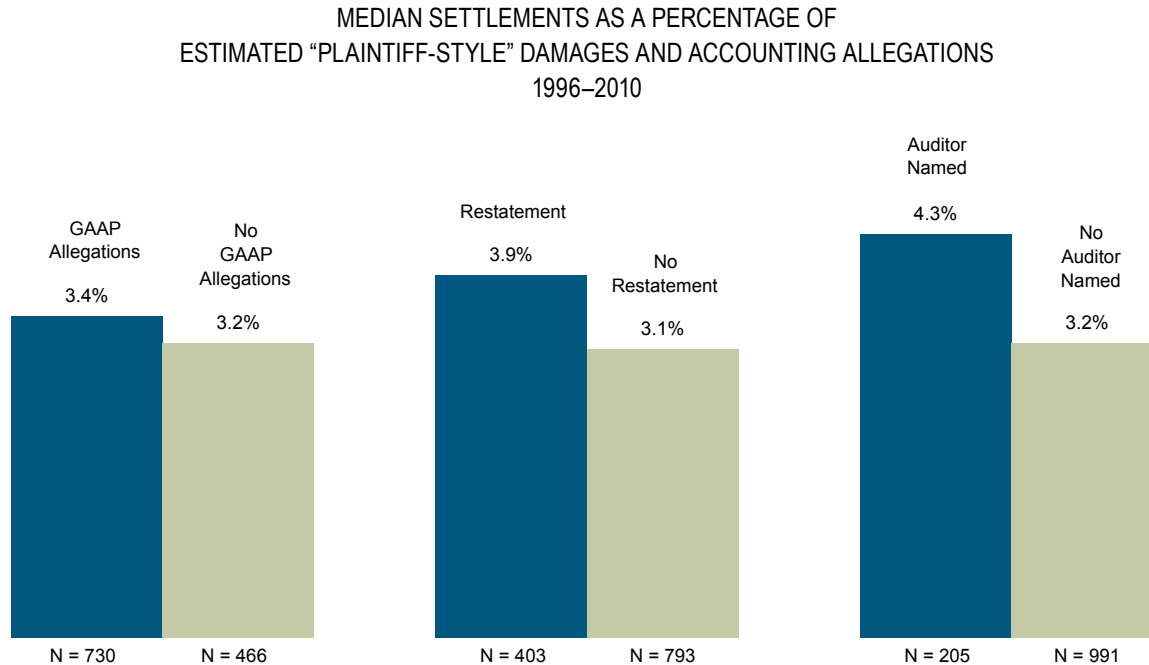


## ANALYSIS OF CASE AND SETTLEMENT CHARACTERISTICS

In addition to estimated “plaintiff-style” damages and DDL, there are a number of other important determinants of settlement outcomes, which we have identified from among more than 60 variables that we collect and analyze as part of our research. In this section, we provide information regarding several of these factors.

Certain variables that we study are related to accounting allegations. In 2010 allegations related to violations of generally accepted accounting principles (GAAP) were included in approximately 70 percent of settled cases compared with 65 percent for cases settled in 2009. These cases continued to be resolved with statistically significant larger settlement amounts than cases not involving accounting allegations. According to the *Accounting Class Action Filings and Settlements Report* issued by Cornerstone Research in 2010,<sup>10</sup> a review of securities class actions from 2004 through 2009 found that filings that do not include accounting allegations are more likely to be dismissed than filings with accounting allegations. The report concludes that “[t]he fact that accounting cases are less likely to be dismissed may be due to the greater complexity of these cases relative to non-accounting cases.” Given that the proportion of settlements involving accounting cases has increased over the last few years, the complexity of these cases may also have contributed to an increasing interval between the filing date and the settlement date that we observe among settlements approved in 2009 and 2010. Consistent with an increase in case complexity, for cases settled during 2009 and 2010, we observe a significant increase in the number of federal docket entries, reflecting the activity level of court pleadings, notices, appearances, and rulings.

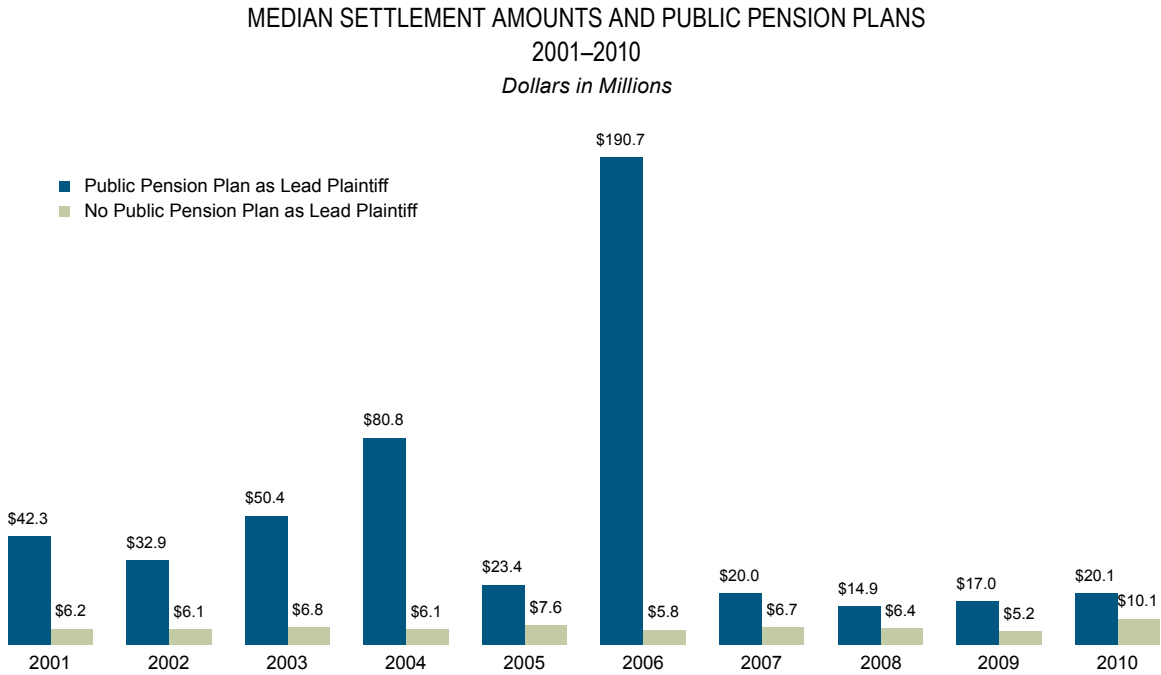
Figure 7



Outside auditors were named in less than 20 percent of post-Reform Act settlements through 2010. However, as shown in Figure 7, cases in which an outside auditor was named as a defendant have settled for relatively higher percentages of estimated “plaintiff-style” damages, even compared with the set of all cases in which improper accounting allegations were made.

Institutional investors continue to increase their participation in post-Reform Act class actions as lead plaintiffs. In 2010 institutions served as lead plaintiffs in more than 67 percent of settlements—the highest proportion to date among post-Reform Act settlements.

Figure 8



Settlement dollars adjusted for inflation; 2010 dollar equivalent figures shown.

We find that the presence of public pension plans as lead plaintiffs is associated with significantly higher settlement amounts.<sup>11</sup> This observation could be explained by these relatively sophisticated investors choosing to participate in stronger cases. In addition, public pension plans tend to be involved in larger cases in which they, as the plaintiffs, may have the potential for a higher-magnitude claim against the defendants. However, a statistical analysis of settlement amounts and participation of public pension plans as lead plaintiffs shows that even when controlling for estimated “plaintiff-style” damages (case size) and other observable factors that affect settlement amounts (such as the nature of the allegations), the presence of a public pension plan as a lead plaintiff is still associated with a statistically significant increase in settlement size.<sup>12</sup> A list of control variables considered when testing the effect of public pension plans serving as lead plaintiffs can be found on page 16.

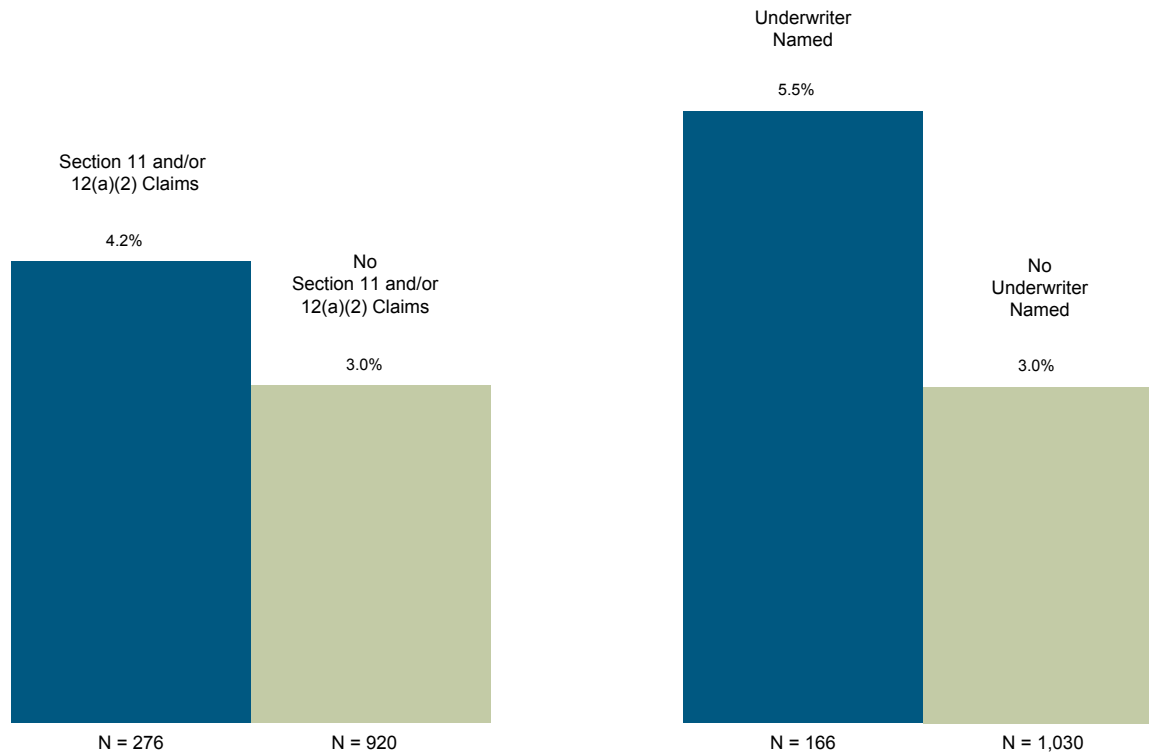
Approximately 34 percent of settlements in 2010 involved Section 11 and/or 12(a)(2) claims, whereas such claims had been included in only 22 percent of cases settled through 2009. Recent data from *Securities Class Action Filings—2010 Year in Review (2010 Filings Report)*, released by the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research, suggest that this percentage will continue to increase, as case filings involving these claims have reached historical highs in recent years.

The percentage of settlements involving underwriters increased sharply in 2010 to 24 percent compared with less than 15 percent for all settlements through 2009. The increase in 2010 can be traced to an increase in case filings involving underwriters in 2007. In fact, approximately 50 percent of all 2010 settlements involving underwriters relate to cases filed in 2007.

Median settlement amounts and median settlements as a percentage of estimated “plaintiff-style” damages continued to be higher for cases involving Section 11 and/or 12(a)(2) claims as compared with cases without these claims. Settlements as a percentage of estimated “plaintiff-style” damages are even higher in cases involving an underwriter as a named defendant. The presence of underwriter defendants is highly correlated with the presence of Section 11 and/or 12(a)(2) claims. Accordingly, multiple regression analysis shows that, after controlling for the presence of an underwriter defendant and other factors, Section 11 and/or 12(a)(2) claims are not associated with a statistically significant increase in settlement amounts.

Figure 9

**MEDIAN SETTLEMENTS AS A PERCENTAGE OF  
ESTIMATED “PLAINTIFF-STYLE” DAMAGES AND SHARE ISSUANCE ALLEGATIONS  
1996–2010**

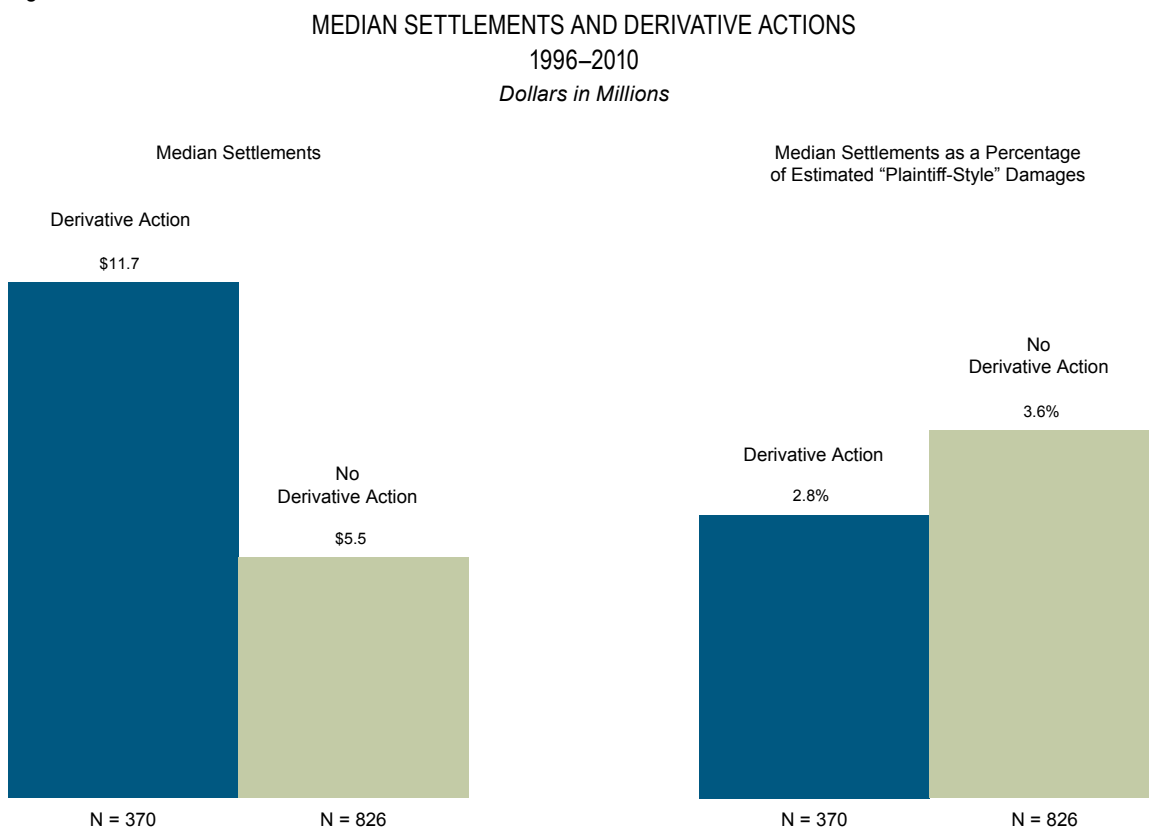


Only 55 cases in our research sample did not involve Rule 10b-5 claims (i.e., involved only Section 11 and/or 12(a)(2) claims). The median settlement amount of \$3.6 million for these cases is lower than the median settlement amount for cases involving Rule 10b-5 claims, while median settlements as a percentage of estimated “plaintiff-style” damages are higher at 9.5 percent.<sup>13</sup>

The number of cases involving companion derivative actions decreased in 2010 compared with 2009. Slightly more than 40 percent of cases settled in 2010 were accompanied by a derivative action filing compared with more than 45 percent of cases in 2009. The 2010 percentage is still higher than the post-Reform Act average of 30 percent. Although settlement of a derivative action does not necessarily result in a cash payment,<sup>14</sup> settlement amounts for class actions that are accompanied by derivative actions (whether coinciding with the settlement of the underlying class action or occurring at a different time) are significantly higher than those for cases without companion derivative actions.

Using a regression analysis to control for estimated “plaintiff-style” damages and other observable factors that influence securities class action settlements, we find that cases involving companion derivative actions are associated with significantly higher settlement amounts. It is particularly important to analyze the association between companion derivative actions and class action settlement amounts in a multivariate context (i.e., allowing multiple variables to be considered simultaneously). In addition to their association with higher estimated “plaintiff-style” damages, class actions accompanied by derivative actions tend to be associated with other factors discussed in this report, including accounting allegations, related actions brought by the Securities and Exchange Commission (SEC), and public pension plans as lead plaintiffs—all of which are important determinants of settlement amounts.

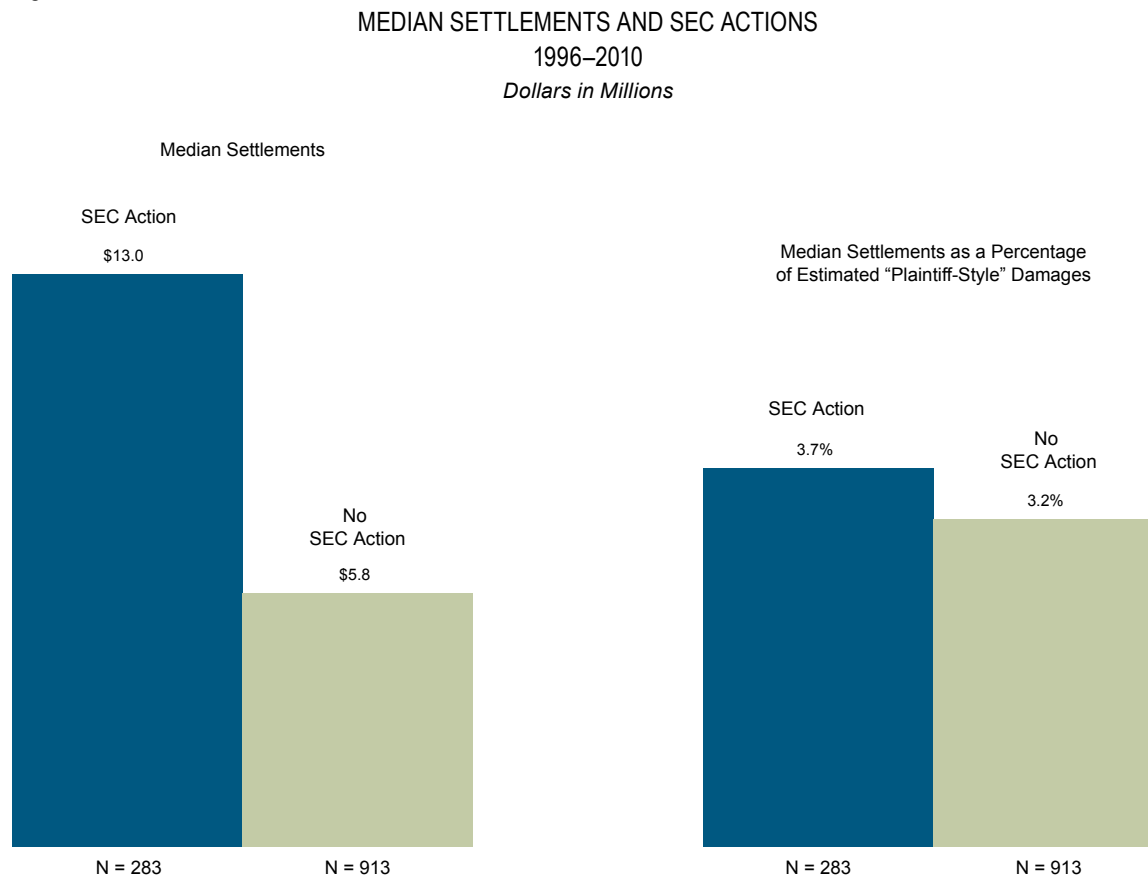
Figure 10



When considered as a percentage of estimated “plaintiff-style” damages, settlements for cases with accompanying derivative actions are slightly lower than for cases with no identifiable derivative action. This lower percentage likely reflects the larger estimated “plaintiff-style” damages that are associated with these cases. In fact, the median estimated “plaintiff-style” damages settlement for cases involving derivative actions is more than twice that for cases without an accompanying derivative action.

The percentage of settled cases that involved a remedy of a corresponding SEC action (evidenced by the filing of a litigation release or administrative proceeding) prior to the settlement of the class action increased to 30 percent in 2010 compared with 20 percent for all cases settled through 2009. This increase is not necessarily surprising considering the widely reported increase in SEC enforcement activity in recent years. Cases that involve SEC actions are associated with significantly higher settlements, as well as higher settlements as a percentage of estimated “plaintiff-style” damages.

Figure 11



## THE STATE OF CREDIT-CRISIS CLASS ACTIONS

Credit-crisis-related cases generally were filed between 2007 and 2009 and have settled at a slower rate than traditional cases. See the *2010 Filings Report* for further discussion. Of the nearly 200 credit-crisis cases filed, only 15 have settled based on our review.

### CREDIT-CRISIS-RELATED SETTLEMENTS

*Dollars in Millions*

Case	Settlement Amount	Case	Settlement Amount
1 Countrywide Financial Corp.	\$624.0	9 Beazer Homes USA, Inc.	\$30.5
2 Merrill Lynch & Co., Inc.	\$475.0	10 Toll Brothers	\$25.0
3 New Century Financial Corp.	\$124.8	11 Accredited Home Lenders Holding Co.	\$22.0
4 MoneyGram International, Inc.	\$80.0	12 General Growth Properties, Inc.	\$15.5
5 American Home Mortgage Investment Corp.	\$37.3	13 Luminant Mortgage Capital, Inc.	\$8.0
6 Ambac Financial Group, Inc.	\$33.0	14 WSB Financial Group, Inc.	\$4.9
7 RAIT Financial Trust	\$32.0	15 Hovnanian Enterprises, Inc.	\$4.0
8 The PMI Group, Inc.	\$31.3		

Periodically we receive inquiries regarding the comparison of the characteristics of credit-crisis cases with those of traditional cases. Below we present summary statistics that illustrate some of these comparisons; however, any inferences drawn from these comparisons are preliminary, given the small number of these settlements to date. Since most settlements of credit-crisis cases occurred during 2009 and 2010, our comparison group comprises non-credit-crisis cases settled during this same time period. As shown, credit-crisis cases have settled for higher amounts but lower percentages of estimated “plaintiff-style” damages compared with non-credit-crisis cases. While the proportion of credit-crisis settlements accompanied by SEC actions is roughly the same as for other types of cases, the percentage of settlements involving contributions from third-party codefendants is significantly higher. In addition, the proportion of credit-crisis cases involving GAAP violations is slightly higher than for non-credit-crisis cases; however, the proportion of settlements associated with financial statement restatements is substantially lower.<sup>15</sup>

### CREDIT-CRISIS-RELATED SETTLEMENTS VERSUS POST-REFORM ACT SETTLEMENTS

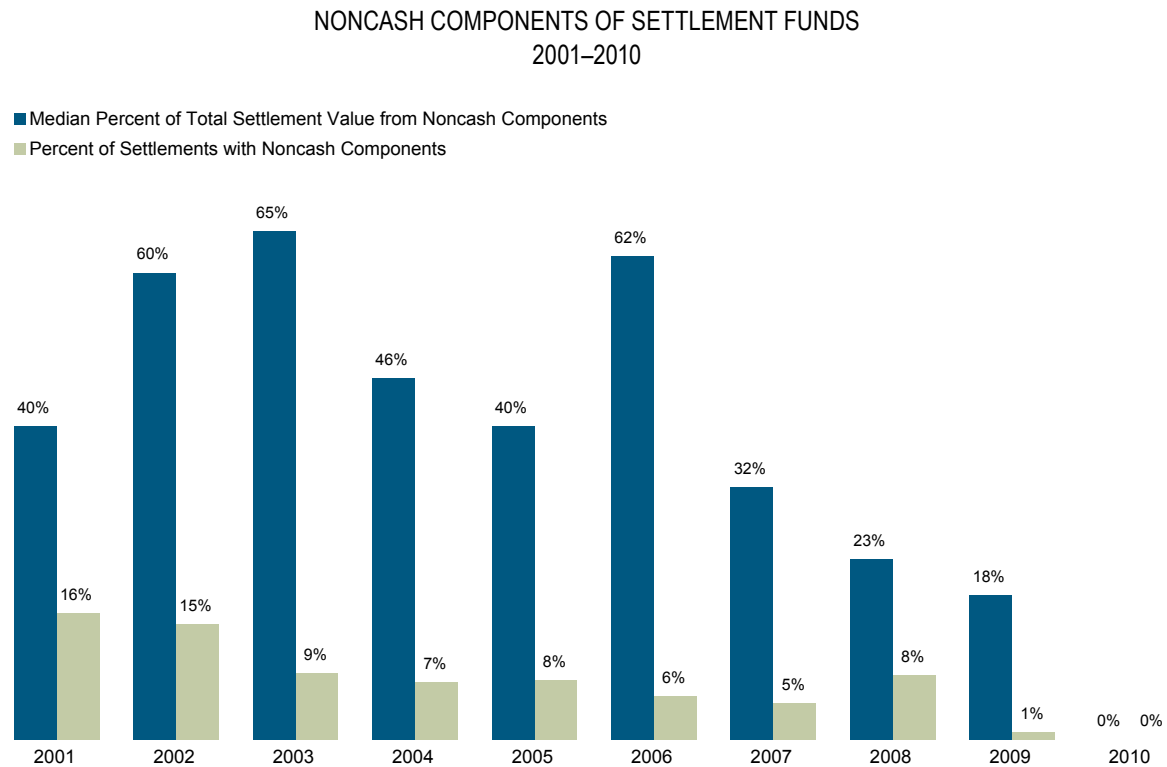
*Dollars in Millions*

	Settlement Amount		Settlements as a Percentage of Estimated Damages		Percent of Cases That Include			
	Median	Average	Median	Average	SEC Actions	Contribution from Codefendant(s)	GAAP Violations	Financial Restatements
Credit-Crisis-Related	\$31.3	\$103.1	2.3%	3.2%	20%	13%	53%	13%
Non-Credit-Crisis-Related	\$10.0	\$31.6	2.7%	4.9%	25%	7%	68%	47%

The percentage of settlements involving noncash components (such as common stock or warrants) has declined substantially over the years following the passage of the Reform Act. In 2010, for the first time in the history of our study, there were no settlements that included noncash components in the agreed-upon settlement fund.

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

Figure 12



## SETTLEMENTS BY PLAINTIFF LEAD COUNSEL AND JURISDICTION

In recent years, we reported that the share of plaintiff law firms' representation as lead or colead counsel had been shifting. During 2009 and 2010, the five firms most frequently involved with securities class action settlements as lead or colead plaintiff counsel remained the same as in the prior two years, although their relative positions shifted slightly. Specifically, the law firm of Robbins Geller Rudman & Dowd (Robbins Geller), formerly known as Coughlin Stoa Geller Rudman & Robbins, retained the position as the most active firm, involved in 30 percent of settled cases. However, with a 10 percent share, Bernstein Litowitz Berger & Grossmann moved into the number two spot, replacing Barroway Topaz Kessler Meltzer & Check (Barroway). The three remaining firms, Barroway, Labaton Sucharow, and Milberg, were each involved as lead or colead counsel in 7 percent of settlements during 2009 and 2010.

The data in Figure 13 show that Robbins Geller was associated with the highest median settlements as a percentage of estimated "plaintiff-style" damages. However, when controlling for other important determinants of settlement amounts, including estimated "plaintiff-style" damages, the presence of Robbins Geller as lead or colead counsel is not associated with a statistically significant increase in settlement amounts.

Figure 13

### PLAINTIFF LAW FIRM BY PERCENTAGE OF SETTLED CASES 2009–2010

<b>Plaintiff Law Firm</b>	<b>Percent of Settled Cases</b>	<b>Median Settlements as a Percentage of Estimated "Plaintiff-Style" Damages</b>
Robbins Geller Rudman & Dowd	30%	3.4%
Bernstein Litowitz Berger & Grossmann	10%	2.7%
Barroway Topaz Kessler Meltzer & Check	7%	2.2%
Labaton Sucharow	7%	1.8%
Milberg	7%	1.2%

Figure displays those firms involved with more than 5 percent of settled cases approved during the two years 2009 and 2010.

The Second and Ninth Circuits have been the dominant circuits for securities class action activity dating back to the passage of the Reform Act. Based on recent data for case filings, we expect this trend to continue.<sup>16</sup> Although these circuits consistently represent the top two in settlement volume, their relative activity levels have varied year by year, largely reflecting concentrations of cases by industry sector (i.e., the concentration of technology firms in the Ninth Circuit and financial sector firms in the Second Circuit). As previously noted, 2010 settlements were dominated by cases involving technology and telecommunications firms; consistent with this, the Ninth Circuit had the largest number of settlements in 2010, with 32 settlements.

Figure 14

**SETTLEMENTS BY FEDERAL COURT CIRCUIT**  
*Dollars in Millions*

Circuit	Number of Cases		Median Settlements	
	2010	Through 2009	2010	Through 2009
First	1	70	\$6.0	\$6.6
Second	21	193	\$12.5	\$9.9
Third	7	112	\$10.0	\$7.6
Fourth	3	37	\$7.5	\$7.8
Fifth	5	91	\$10.5	\$6.0
Sixth	6	55	\$12.1	\$15.0
Seventh	3	52	\$4.3	\$9.8
Eighth	1	39	\$80.0	\$9.5
Ninth	32	280	\$13.8	\$7.7
Tenth	2	46	\$8.1	\$7.9
Eleventh	4	108	\$2.3	\$5.1
<b>All Federal Cases</b>	<b>85</b>	<b>1,083</b>	<b>\$11.3</b>	<b>\$7.6</b>

Settlement dollars adjusted for inflation; 2010 dollar equivalent figures shown.

## CORNERSTONE RESEARCH'S SETTLEMENT PREDICTION ANALYSIS

Features of securities cases that may affect settlement outcomes are often correlated, as noted in this report. Regression analysis makes it possible to examine the effects of these factors simultaneously. Accordingly, as part of our ongoing research on securities class action settlements, we applied regression analysis to study factors associated with settlement outcomes. Analysis performed on our sample of post-Reform Act cases settled through December 2010 reveals that variables that are important determinants of settlement amounts, either independently or in combination, include:<sup>17, 18</sup>

- Simplified estimated “plaintiff-style” damages
- DDL
- Most recently reported total assets of the defendant firm
- Number of entries on the lead case docket
- Indicator of the year in which the settlement occurred
- Indicator of whether intentional misstatements or omissions in financial statements were reported by the issuer
- Indicator of whether a corresponding SEC action against the issuer or other defendants is involved
- Indicator of whether an accountant is a named codefendant
- Indicator of whether an underwriter is a named codefendant
- Indicator of whether a companion derivative action is filed
- Indicator of whether a public pension plan is a lead plaintiff
- Indicator of whether noncash components, such as common stock or warrants, make up a portion of the settlement fund
- Indicator of whether securities other than common stock are alleged to be damaged
- Indicator of whether estimated “plaintiff-style” damages are greater than \$1 billion

Settlements are higher when estimated “plaintiff-style” damages, DDL, defendant asset size, or number of docket entries are higher. Settlements are also higher in cases involving intentional misstatements or omissions in financial statements reported by the issuer, a corresponding SEC action, an accountant named as codefendant, an underwriter named as codefendant, a corresponding derivative action, a public pension fund involved as lead plaintiff, a noncash component to the settlement, or securities other than common stock alleged to be damaged. Settlements are lower if the settlement occurred in 2002 or later. In addition, reflecting the fact that settlements in relation to damages are lower for large cases, settlements are lower if estimated “plaintiff-style” damages exceed \$1 billion (when the variable representing the amount of estimated “plaintiff-style” damages is also included in the regression).

## CONCLUDING REMARKS

It is possible that the challenging economic environment that continued through 2010 contributed to the lower number of settlements approved during the year. However, the more likely cause for this decline is a combination of the substantial drop in the number of cases filed during 2006 (see *Securities Class Action Filings—2010 Year in Review* issued by the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research referred to earlier in this report) and the fact that to date, credit-crisis cases have generally taken longer to settle. Since the number of case filings has been increasing since 2006 and credit-crisis cases are now becoming a much smaller population of filed cases, the decline in the number of cases settled in 2010 is not expected to persist.

As previously noted, for the first time in more than 10 years, the median settlement amount surpassed \$10 million. In addition, in 2010 median estimated “plaintiff-style” damages were higher than in any prior year in the history of our study. In contrast to prior years in which significant changes in settlement trends have primarily been driven by the presence or absence of very large cases, these findings represent a broad-based shift in securities class action settlements.

As discussed in the *2010 Filings Report*, the median DDL has increased for cases filed in recent years. Given the association between DDL and settlement amounts, higher median settlement amounts may continue in future years.

## SAMPLE AND DATA SOURCES

Our database is limited to cases alleging fraudulent inflation in the price of a corporation’s common stock (i.e., excluding cases filed only by bondholders, preferred stockholders, etc. and cases alleging fraudulent depression in price). Our sample is also limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation’s common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.

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

## ENDNOTES

- 1 Our categorization is based on the timing of the settlement approval. If a new partial settlement exceeds the then-current settlement fund amount by 50 percent or more, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount, but the settlement hearing date is not changed.
- 2 Available on a subscription basis.
- 3 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- 4 Sources for the categorization of “credit crisis” include the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research and the *D&O Diary* ([www.dandodiary.com](http://www.dandodiary.com)).
- 5 The total settlement value is based on an agreed-upon amount at the time of settlement, including the disclosed value of any noncash components. Figures do not reflect attorneys’ fees, additional amounts that may be paid to the class from related derivative or SEC settlements, or amounts that may have been settled by opt-out investors.
- 6 Our simplified “plaintiff-style” model is applied to common stock only. For all cases involving Rule 10b-5 claims, damages are determined from a market-adjusted backward value line. For cases involving only Section 11 and/or 12(a)(2) claims, damages are determined from a model that caps the purchase price at the offering price. A volume reduction of 50 percent for shares traded on NASDAQ and 20 percent for shares listed on NYSE or Amex is used. Finally, no adjustments for institutions, insiders, or short sellers are made to the float.
- 7 Thirteen settlements out of the more than 1,200 cases in our sample were excluded from calculations involving estimated “plaintiff-style” damages for lack of available stock price data. The WorldCom settlement was also excluded from these calculations because most of the settlements in that matter related to liability associated with bond offerings (and our research does not compute damages related to securities other than common stock).
- 8 DDL calculated for the class-ending disclosure that resulted in the first filed complaint.
- 9 DDL information is presented in Figure 6 to provide a benchmark for the convenience of readers, since the measure is simple to compute and, as stated, does not require application of a trading model.
- 10 Cornerstone Research. 2010. *Accounting Class Action Filings and Settlements, Review and Analysis, 2004–2009*.
- 11 The extraordinarily high median settlement amount for public-pension-led settlements in 2006 was driven by six separate settlements in excess of \$1 billion.
- 12 This regression analysis may not control for the potential endogeneity in the choice by public pension plans to participate in a class action.
- 13 The median settlement as a percentage of estimated damages for cases with only Section 11 and/or 12(a)(2) claims was lower in 2010 than for prior years’ settlements. For nine of the settlements approved in 2010, claims were limited to Section 11 and/or Section 12(a)(2) claims. The median settlement for these nine matters was \$5.9 million, with a median settlement value of 7.3 percent of estimated “plaintiff-style” damages.
- 14 Derivative cases are often resolved with changes made to the issuer’s corporate governance practices, accompanied by little or no cash payment; this continues to be true despite the increase in corporate controls introduced after the passage of the Sarbanes-Oxley Act of 2002. For purposes of the analyses in this report, a derivative action—generally a case filed against officers and directors on behalf of the issuer corporation—must have allegations similar to the class action in nature and time period to be considered an accompanying action.
- 15 It is important to note, however, that the characteristics of credit-crisis-related cases that have settled to date could potentially differ from those of the remaining group of cases yet to be resolved.
- 16 Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research. 2011. *Securities Class Action Filings—2010 Year in Review*.
- 17 Our settlement database includes publicly available and measurable information about settled cases. Nonpublic or nonmeasurable factors, such as relative case merits or the limits of available insurance, are not reflected in the model to the extent that such factors are not correlated with the variables that are accessible to us (that is, publicly available and measurable factors).
- 18 Due to the presence of a small number of extreme observations in the data, we apply logarithmic transformations to settlement amounts, estimated damages, DDL, the defendant’s total assets, and the number of docket entries.

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