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NATIONAL ECONOMIC RESEARCH ASSOCIATES

50 MAIN STREET, WHITE PLAINS, NEW YORK 10606
TELEPHONE: *914.448.4000* FACSIMILE: *914.448.4040*

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Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions?

by*

Denise N. Martin, Vinita M. Juneja,
Todd S. Foster, Frederick C. Dunbar

We have updated and expanded our earlier studies on recent trends in securities class actions. Our data now cover the five full calendar years from January 1991 to December 1995, as well as dispositions reported through June 1996 and filings reported through October 1996. Below, we summarize our key findings.

- A decrease in the number of federal filings was observed in early 1996, but does not appear to signify a general downturn. The most recent data (which include filings reported through October 1996) indicate no significant decline in federal class action filings has occurred since passage of the Private Securities Litigation Reform Act of 1995 ("the Reform Act").

- A significant increase in the number of *state* filings has occurred since passage of the Reform Act.

- The filing rate of cases responds to overall stock market conditions. Significantly more cases are filed in the months following a bearish market

* Denise N. Martin is a Senior Consultant. Vinita M. Juneja is a Vice President, Todd S. Foster is an Analyst and Frederick C. Dunbar is a Senior Vice President at National Economic Research Associates, Inc. (NERA), an economic research and consulting firm.

than following a bullish one. To date, these market movements have had a more pronounced impact on the filing rate than has the Reform Act.

- From January 1991 through June 1996, 998 shareholder class actions were dismissed, settled or resolved by a jury verdict.

- If the historic 12 percent average annual growth rate continues in 1996, we can expect almost 250 cases to be resolved this year, up from 138 in 1991.

- Over the full sample period, 80 percent of the cases were resolved through settlement. Even cases that were dismissed, reached trial or received a jury verdict often settled before an appeal was resolved.

- Dismissals as a percentage of case dispositions have ranged between 14 and 21 percent over the past five and a half years. In the first half of 1996, 20 percent of dispositions were dismissals, as they were in 1995, up from 16 percent in 1994.

- Approximately $3.9 billion has been paid out in settlement awards from January 1991 through June 1996 for 475 federal shareholder class action settlements. These cases represent roughly 60 percent of all settlements, suggesting as much as $6.5 billion has been paid out overall. On average, plaintiffs' attorneys have received one-third of the settlement awards in each year.

- Average settlements increased significantly between 1994 and 1995, as did plaintiffs' attorneys' fees. In particular, the average settlement for calendar year 1995 was $10.6 million, up from $6.1 million in 1994. Plaintiffs' attorneys' fees increased proportionately, from $2.0 million in 1994 to $3.5 million in 1995. Average settlements and fees for the first six months of 1996,

$7.0 million and $2.3 million, respectively, suggest the 1995 increase will not be sustained, and may even be reversed.

- The ratio of settlement value to plaintiffs' claimed damages over the sample period was 14 percent. The ratio of settlement value to investor losses was about 9 percent.

- About 25 percent of the settlements were for under $2 million.

- A disproportionately large number of securities class action cases are filed against high-technology firms, accounting for roughly 23 percent of all filings over the past five and a half years. This filing trend has continued in 1996. Curiously, only 15 percent of the cases that *settled* in the first half of this year were against high-technology companies, down from 30 percent over the past five years.

- As in our earlier studies, cases with higher plaintiffs' damage estimates and higher investor losses have higher settlements. However, the increase is less than proportional. As an example, consider two cases that are similar except that one has twice the plaintiffs' damage estimate of the other (e.g., $200 million versus $100 million). Our analysis shows that the expected settlement in the former case is roughly 48 percent higher than in the latter: about $12.3 million versus $8.3 million. This finding is consistent with the theory that settlement values are constrained by a firm's assets and insurance coverage, which are necessarily limited.

- Inclusion of accounting firms as codefendant adds over 70 percent to the expected settlement value of a shareholder class action for the period January 1991 to June 1996. This finding is again consistent with the notion that available assets, especially insurance, are a major factor in explaining

settlement amounts. When we consider 1995 and 1996 settlements alone, this figure jumps to 150 percent. We posit that the increasing effect of these advisor defendants in 1995 may be related to a change after the *Central Bank* decision in how accountants' liability is pled. The proportionate liability clause enacted through the Reform Act may be partially responsible for the decline that we observe in the first half of 1996 in how much the inclusion of an accounting firm as codefendant adds to expected settlement value.

- Settlements that occur within one year of filing are about 25 percent below those that occur later. While this effect can be observed in settlements reached in the most recent 18 months, it has lost statistical significance. We posit that dynamics related to the Reform Act may be responsible.

- For cases settled between January 1995 and June 1996, a governmental agency investigation with an adverse outcome is associated with a statistically higher settlement, suggesting that the merits may be playing an increasing role in case resolution. Although the Reform Act did not govern the resolution of these cases, which were filed prior to its enactment, we suspect that it may be indirectly responsible.

- The presence or absence of accounting firms or underwriters as codefendants, the age of the case and the size of either investor losses or plaintiffs' damage estimate together explain between 52 and 64 percent of the variation in class action settlement values between 1991 and mid-1996.

- For a case in which a company and its officers and directors are named as defendants, an average of 70.0 percent of the settlement amount is paid from directors' and officers' liability insurance, 29.7 percent by the defendant company and 0.3 percent by the officers and directors personally.

- For a case with a concurrent derivative action, on average approximately 65 percent of the settlement is allocated to the shareholder class action.

I. BACKGROUND AND PURPOSE

Over the past five years, NERA has conducted a descriptive analysis of recent trends in securities class actions. We publicize this research largely to provide a consolidated source of information for risk managers, counsel for plaintiffs and defendants, policymakers and other interested parties. Risk managers use this information to assess the likely exposure associated with potential future litigation and, on this basis, to determine appropriate director and officer insurance premiums. Lawyers for defendants, plaintiffs and insurance companies involved in shareholder class actions use the results presented here to estimate the likely settlement in ongoing litigation, which can be a valuable tool in settlement negotiations and analysis of appropriate fee requests. Policymakers use these results to draw conclusions in the debate over litigation reform.

In the realm of policy, the Private Securities Litigation Reform Act of 1995 (hereafter, "the Reform Act") made a number of significant changes to the securities laws. Changes that are likely to affect the filing and settlement of securities class actions are: (1) the new rules governing the appointment of lead plaintiff; (2) the stay of discovery pending a motion to dismiss; (3) the adoption of proportionate liability under certain circumstances; (4) the implementation of a 90-day bounce-back rule when measuring damages; and (5) the addition of negative causation to the statutory language under Section 12.

This study, which we hope will offer some insight on the likely effects of the new securities laws on the number and pattern of filings, as well as on the size and characteristics of settlements, differs from our earlier analyses in three ways:

(1) we have included cases that reached a disposition between January 1995 and June 1996, thereby extending the sample for which we calculate investor losses from January 1991 through June 1996;

(2) we have expanded the database of cases for which we have actual plaintiffs' claimed damages and performed additional analyses with this sample; and

(3) we have added a database of state and federal filings of lawsuits filed from January 1991 through October 1996.

The expanded and updated dataset allows us to offer insights on questions of importance to the shareholder litigation debate. For example:

(1) do variables presumably related to merit have a statistically significant effect on settlement values?

(2) do variables that should, in theory, be unrelated to merit (such as availability of insurance assets, inherent volatility of the stock and the circuit in which the suit was brought) explain case disposition?

(3) has the Reform Act affected the number of suits filed or influenced settlement negotiations?

II. DESCRIPTIVE ANALYSIS OF CASE FILINGS

A. Data

Securities Class Action Alert (SCAA) is the primary source of our data on case filings. This filing data was collected from monthly issues of *SCAA* published between January 1991 and October 1996 along with additional data compiled by *SCAA*. Federal court filings are generally reported within a month of a complaint's filing and state court filings generally within two to three months.[1] Additional filings were collected from Securities Class Action Clearinghouse (which covers filings since passage of the Reform Act) and *Bloomberg, L.P.* (for September and October 1996, since there is a lag in reporting by *SCAA*).

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[1] To test this data source for completeness of coverage, we searched the news database of Dow Jones & Co. (Dow Jones News Service and *The Wall Street Journal*) for filings in December 1995 through February 1996 and the news database of *Bloomberg, L.P.* for the months of July and August 1996. We found that all filings reported by Dow Jones and *Bloomberg, L.P.* were contained in *SCAA*'s database.

B. The Impact of the Reform Act on Filings of Shareholder Class Actions

1. The Theory

For some time there has been a serious debate over whether too many meritless securities class action cases are filed. What may be the first round of the public policy debate ended on December 22, 1995, when Congress overrode President Clinton's veto of the Private Securities Litigation Reform Act of 1995. Congress had sided with the reformers and passed legislation to encourage a "reduction of abusive litigation" and a "reduction of coercive settlements."[2] Several of the changes enacted, as well as the process of enactment itself, might be expected to affect the number, pattern and venue of case filings.

First, the new law sought to reduce the preference given to the first plaintiff (and law firm) to file a class action suit in the appointment of the often-lucrative roles of lead plaintiff and of lead plaintiffs' counsel. This change can be expected to reduce the incentive to rush to file a suit before the case's merits have been closely assessed, and so it might be expected initially to delay filings and, ultimately, to decrease the number of filings.

A second change that may affect filings is the replacement of joint and several liability of defendants with proportionate liability. Under joint and several liability, codefendants of a bankrupt defendant might be held responsible for the entire amount of a jury award even if they were only minimally responsible for the fraud. The Reform Act allows these parties to pay only their share of the award, based on their contribution to the fraud, regardless of the financial condition of their codefendants. This change might be expected to reduce the number of low-value lawsuits filed by decreasing the potential rewards of a lawsuit.

The adoption of the 90-day bounce-back rule for Section 10 claims and the negative causation defense for Section 12 claims can also be expected to reduce the average value of these cases. The 90-day bounce-back rule allows the damage per share to be reduced if the price

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2 See House of Representatives, *Securities Litigation Reform Conference Report*, Title I and Title II, Report 104-369, November 28, 1995.

rebounds in the period following an alleged disclosure.[3] Taking account of negative causation corrects a previous potential windfall to plaintiffs under Section 12, whereby they were entitled to a full refund for their shares even if the security had deteriorated in value in the interim for reasons unrelated to the alleged fraud. If we assume that plaintiffs' attorneys perform a cost-benefit analysis in determining whether to bring a case, we would expect to see cases that would have been potentially profitable under the old law fall below the threshold level of potential profitability with these new limitations. As a result, we might expect a reduction in the number of filings to be associated with these changes.

In addition, we might expect a temporary change in the pattern of filings in anticipation of the law's implementation. As the Reform Act was making its way through Congress, and especially as the veto override was seen as imminent, there was an incentive for plaintiffs' counsel to accelerate filings so that their claims would not be considered under the new legislation. To the extent that this strategic consideration mattered, we would expect to see a surge in filings just before the Reform Act became law, followed by a drop in the immediate aftermath of the veto override.

Finally, we must consider the possibility that the increased difficulty of successfully bringing suit in federal court may have caused some cases to be filed instead (or in addition) in state court. Thus, to see whether the Reform Act has truly affected the number of suits filed and not just changed their venue, we consider what has happened to both state and federal filings.

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[3] While the potential for damage reduction is enormous, the prospect that the bounce-back will appreciably reduce damages in more than a handful of cases is small. See Jonathan C. Dickey and Marcia Kramer Mayer, "Effect on 10b-5 Damages of the 1995 Private Securities Litigation Reform Act: A Forward-Looking Assessment," *Business Lawyer*, Vol. 51, August 1996. ("Dickey and Mayer, August 1996")

2. Early Evidence on the Effects of the Reform Act

To test these hypotheses, we conducted an analysis of trends in the filing of shareholder class actions.[4] In Table 1, we summarize federal court filings by month.[5] Since many factors in addition to legal reform may influence filing rates, we restricted our analysis to the periods immediately surrounding passage of the Reform Act. At first blush, a slight decrease from 1995 levels appears to be in progress. In particular, the 104 federal filings reported to date in 1996 imply an annualized rate of 125 filings per year, below the 162 federal court filings for the prior year.

However, as noted above, it appears likely that the timing of some federal filings was accelerated to avoid being subject to the Reform Act. First, there were 21 filings listed in December 1995, versus an average of 14 for the 70-month sample and 13 for the rest of 1995. The only other six months with more than 21 filings followed months where the market had generally performed poorly; the December 1995 filings followed a bullish market in November. (For more discussion of the market's influence on the number of filings, see Section C below.)

This finding supports the hypothesis that some cases were rushed to court prior to December 22, 1995 to beat the impending veto override. Further support is provided by the fact that only eight and five filings were reported in January and February 1996, respectively, in the immediate aftermath of the enactment. For comparison, the total number of reported filings fell to fewer than nine only five other times in the prior 60 months of our sample (February 1991, September 1991, November 1991, January 1992 and June 1995) and had never before been as low as five filings. Taken together, this evidence seems to indicate that the law's enactment had a one-time effect of shifting some lawsuits that would have been filed in early 1996 to late 1995.

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[4] For additional analyses of the effects of the Securities Litigation Reform Act, see Frederick C. Dunbar and Denise N. Martin, "The Effect of the 1995 Reform Act on Damage Estimates and Settlements in Shareholder Class Actions: An Overview"; and Dickey and Mayer, August 1996.

[5] Federal court filing data consist of all cases compiled by *SCAA*, Securities Class Action Clearinghouse and *Bloomberg, L.P.* (for October 1996).

As an additional test of this observation, in Table 2 we analyze the time to filing for these federal suits. We observe that from January 1991 through December 5, 1995, class actions were filed an average of 49 days after the end of the class period. From December 6, 1995, following the passage of the Bill in the Senate, to December 22, 1995, we see the average lag time shrinking to 11 days, suggesting that many filings were rushed before Congress had a chance to override President Clinton's veto of the Reform Act. Finally, for the period since December 22, 1995, we observe an average time to file of 63 days. The increase may reflect one early success of the Reform Act -- slowing down the "race to the courthouse" that may have led counsel to file claims without first fully considering the merits of each case.[6]

To avoid drawing conclusions about the filing rate that are contaminated by this transition period, we consider filings reported from April 1996 through October 1996. In these seven months, the total number of federal suit filings reported were actually the same as the number of federal filings reported in 1995 (81). Furthermore, we cannot even say that the near-constancy of filings over this period from 1995 to 1996 represents the breaking of an upward trend: the total filings in 1995 were lower than those listed in 1994, and the December 1995 listings were probably inflated by the acceleration of filings that would have been listed in January 1996. In this regard, our initial evidence does not support a finding that the legislation reduced the number of federal class action suits filed versus the comparable, pre-Reform Act period.[7]

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[6] The sample considered in this analysis consists of cases filed in federal court for which *SCAA* or *Bloomberg, L.P.* provide a defined class period. We also calculated the percentage of filings that were listed within 90 days of the end of the class period. For those cases where we had data from January 1, 1991 through December 5, 1995, 81.6 percent were listed within 90 days of the end of the class period. The share of cases filed within 90 days quickly rose to 100 percent from December 6, 1995 to December 22, 1995, though we only have 10 cases for which we could calculate this time lag. Finally, when we look at the remaining period since December 22, 1995, we again see a sharp change with 80.7 percent of the suits for which we have data filed within 90 days of the end of the class period.

[7] The test of the hypothesis that the number of April to October 1996 federal court filings is lower than that of the corresponding months in 1995 yields a t-statistic (0.000) insignificant at the 55 percent level.

C. The Impact of Stock Market Conditions on Filings

It is often argued that securities class actions are filed in reaction to adverse stock price movements rather than any indication of fraud. As a test of this contention, we analyzed the relationship between the filing of such suits and the price movements of the market as a whole, using the Wilshire 5000 index as a proxy for the overall performance of stocks. If it is indeed fraud in the price of individual stocks that determines whether a suit is filed, market movements would not be expected to significantly affect the number of suits filed in a given month.

In particular, using a technique known as multiple regression analysis, described more fully in Section IV, we measured the correlation between movements in the Wilshire 5000 over a two-month period and the number of filings in a given month. We find that the monthly percentage changes in the Wilshire 5000 over each of the first two months are significant factors in explaining the number of securities class actions filed in the second month.[8] These results are summarized in Table 3. The relationship between movements in the market and the level of filing activity is depicted in Figure 1.

D. State Court Filings

Next, in Table 4, we summarize the corresponding monthly state court filings.[9] The 78 cases reported through October 1996 imply an annual rate of 94 filings per year, well above the 48 cases averaged over the prior five years. In fact, the number of suits filed from January

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[8] The form of this equation is $filings_t = a + b*Wilshire_t + c*Wilshire_{t-1} + u$ where "filings" represents the number of suits filed in a given month, "Wilshire" represents the percentage change in the Wilshire 5000 index in a given month, "t" represents the current month, "t-1" represents the prior month.

[9] State court filing data consist of all cases compiled by *SCAA*, Securities Class Action Clearinghouse and *Bloomberg, L.P.* (for September and October 1996). This data is supplemented with state court filings initially reported by *SCAA* which have subsequently been superseded, by *SCAA* convention, with similar federal filings. At time of publication, 16 notices of cases filed in state courts that were published in *SCAA* could not be reconciled with data in *SCAA*'s current state filings database. These cases may not be included in our sample; however, since the cases are dispersed over the sample period of 1991 to 1996, they should not create a bias in our analysis of state filings.

through October 1996 exceeds the total number of suits filed each year from 1991 through 1995.[10]

In sum, this early evidence indicates that, contrary to the expectations of many, the number of securities class actions filed in federal court has fallen insignificantly, if at all. We do, however, observe a significant surge in state court filings. This latter finding may be seen as further evidence of the desire by plaintiffs' attorneys to maintain a diversified portfolio of ongoing lawsuits to spread their risks across the optimal number and types of cases.[11]

III. Descriptive Analysis of Case Dispositions

A. Data

In addition to being a source for case filings, *SCAA* is the primary source of our data on case names, defendants, district courts, class periods, settlement amounts, plaintiffs' attorneys' fee awards and other case details. For case dispositions, we supplemented this source with a computer search of the *Dow Jones News Wire* as well as with stories from *The Wall Street Journal, The New York Times, Bloomberg, L.P.* and *Securities Regulation & Law Report.*

For 46 class actions, we had access to confidential information on plaintiffs' claimed damages, which we could relate directly to the settlement values obtained in those cases. This sample will be referred to, throughout the text, as the database on plaintiffs' claimed damages. We also collected data for a large number of other class actions whose dispositions were publicly announced. For most of this latter sample, however, we were not privy to plaintiffs' damages estimate. In 331 of these cases for which we had enough data, as a substitute for plaintiffs'

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[10] The test of the hypothesis that the number of January to October 1996 state court filings is greater than that of the corresponding months in 1995 yields a t-statistic (2.54) significant at the 95 percent level.

[11] See John C. Coffee, Jr., "The Unfaithful Champion: The Plaintiff as Monitor in Shareholder Litigation," *Law and Contemporary Problems*, Vol. 48, No. 3, Summer 1985; and Frederick C. Dunbar, Vinita M. Juneja and Denise N. Martin, "Shareholder Litigation: Deterrent Value, Merits and Litigants' Options," presented at Conference on Auditor and Director & Officer Liability for Misstated Financial Statements, sponsored by John M. Olin School of Business, Washington University, St. Louis, Missouri (Washington University Working Paper BLE-95-07-a), 1995. ("Dunbar, et al., October 1995")

claimed damages, we estimated investor losses. (To estimate investor losses, we collected daily price and volume figures and monthly shares outstanding numbers from two computerized data services, FactSet Data Systems, Inc. and Interactive Data Corporation.) This larger sample will be referred to, throughout the text, as the investor losses database.

The specific criteria used to select cases to be included in this study or in any of the tabulations are explained in the Notes and Sources to the tables. In general, we attempted to create and use the largest sample of comparable cases for which we could obtain the data necessary to perform the statistical tests of interest.

B. Case Disposition Trends

In Table 5 and Figure 2, we summarize shareholder class action case dispositions from January 1991 through June 1996. Figure 2 also presents annual data on case filings. Our database includes 998 cases that were dismissed, settled or resolved by jury verdict during this time period. Of these, 220 cases were resolved in 1995, up from 138 in 1991. These figures suggest a 12 percent average annual growth rate in the number of dispositions. While some of this increase may be due to more complete reporting of settlements, a significant amount is likely due to the increasing number of such claims being filed. Table 5 and Figure 2 indicate that dismissals as a percent of all reported dispositions in the last year and a half have risen slightly, from 16 percent in 1994 to 20 percent in 1995 and in the first half of 1996. Reported judgments have been steadily decreasing from five in 1993 to four in 1994 to three in 1995 to zero through June of this year. Over the five and a half year period, 80 percent of cases settled.

In Table 6, average settlement value, total value of settlements and average plaintiffs' attorneys' fee data are presented. Note that:

(1) Average and median settlement values in 1995 shot up from those in 1994 by 74 percent and 32 percent, respectively, but dipped back in the first half of 1996 to only 15 percent and 7 percent higher than the 1994 values.

(2) Similarly, the average plaintiffs' attorneys' fee award rose proportionately in 1995 and then fell back resulting in an overall average over the five and a half years of $2.5 million.[12]

C. Settlements as a Proportion of Plaintiffs' Claimed Damages or Investor Losses

Tables 7a and 7b narrow our focus to those cases where the only securities alleged to be damaged are common stock. We examine settlements in these cases as a proportion of plaintiffs' damage estimate as well as of investor losses.

In the database of plaintiffs' claimed damages, we have actual estimates of damages made by plaintiffs' experts during the course of 46 shareholder class action litigations. As shown in Table 7a, the average settlement in these cases was $7.8 million. As a percentage of plaintiffs' alleged damages, the average settlement was 13.7 percent, while the median was 11.9 percent.

We also estimated and used investor losses as a proxy for alleged damages. This increased the sample size of our analysis to 331 cases. (As discussed more fully below, these measures are significantly correlated and produce results that are largely similar.) Investor losses are computed in a manner similar to the approach sometimes used by plaintiffs in computing damages.[13] Briefly stated, losses are measured relative to what a class member would have earned with an investment in the S&P 500 index that had the same end-of-class period value.[14]

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12 See Notes and Sources, Note 6.

13 See, for example, *Control Data Corporation Securities Litigation*, 116 F.R.D. 216 (8th Cir. 1986); *In Re: Kay Jewelers Securities Litigation*; and *In Re: Coated Sales, Inc.* It should be noted that this approach to damage estimation in Rule 10b-5 and Section 11 securities class action suits can generate highly biased results. It is incapable of determining how much of investor losses is due to the alleged fraud and how much is due to other factors, such as the inherent volatility of the defendant's stock price or idiosyncratic events affecting the issuer that are unrelated to the alleged fraud. Note that in some of the literature, there is a confusion between allowable market loss as used by claims administrators and investors losses as we calculate it. These measures are not necessarily equivalent. If allowable loss does not control for market movements, it will almost certainly be bigger than investor losses. If allowable loss is a single dollar amount per share, it will almost certainly be different from investor losses.

14 In practice, this index is sometimes adjusted by the defendant firm's beta or replaced with an index specific to the industry (e.g., the Hambrecht and Quist Technology index). Neither of these refinements affects the criticism of the approach noted in footnote 9 above. Also, the proportional decay model is typically adjusted by plaintiffs for shares that are held through the class period by institutions (SEC Form 13F filers), insider transactions and holdings (SEC Forms 3 and 4 filers) and shareholders with 5 percent ownership of the

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The number of shares purchased on any given day during the class period and either sold on any subsequent day during the class period or held to the end of the class period is estimated using the proportional decay model developed by John Torkelsen, an expert witness often relied upon by plaintiffs' attorneys.

As shown in Table 7b, the average settlement in the 331 cases for which investor losses were calculated went up during 1995 from 1994, but not as dramatically as in the broader sample of 475 cases. Furthermore, unlike the broader sample, the average settlement in 1996 was slightly higher than in 1995. The average ratio of settlement value to investor losses was 8.9 percent during 1995, down from 9.4 percent in 1994, but then rose again in 1996 to 9.0 percent. The median of this ratio has steadily increased from 1992 (4.9 percent) to 1996 (6.8 percent). The ratio of total settlements to total investor losses has also steadily increased, from 2.6 percent in 1993 to 5.7 percent in 1996. This figure is lower than the average ratio because some large cases have settlements that are very small percentages of investor losses.

Figures 3 and 4 indicate that settlement values tend to increase less than proportionately with investor losses. In Section IV, we examine this relationship for both plaintiffs' claimed damages and investor losses using statistical analysis.

D. Settlements as a Proportion of Plaintiffs' Claimed Damages or Investor Losses By Settlement Amount

In Tables 8a and 8b, we present the average and median ratio of settlements to plaintiffs' claimed damages and investor losses by settlement amount. Our goal here was to investigate the theory that cases settling for less than $2 million were potentially settling for nuisance value, as hypothesized by Joseph Grundfest[15] as well as by various parties arguing for

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outstanding stock (SEC Forms 13D and 13G filers). See Tables, Notes and Sources, note 12 for a description of the investor losses calculation.

[15] Professor Grundfest states that "This analysis suggests that a key statistic in the merits debate is the difference between the observed settlement amount and the amount a defendant would be willing to pay simply to avoid the costs of mounting a defense. A defendant always has an incentive to settle a case for an amount less than avoidable defense costs because any such settlement is less costly than pursuing the case to verdict and prevailing at trial. In contrast, a defendant never has an incentive to settle for an amount in excess of

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shareholder litigation reform. Consistent with the results in Grundfest's study, the sample of cases for which we have plaintiffs' claimed damages indicates that 20 percent settled for less than $2 million (Table 8a). The ratio of awards to claimed damages has a mean and dispersion similar to the larger investor losses sample described below.[16]

In Table 8b, we examine the sample of cases for which we calculated investor losses and find, similarly, that about 26 percent of the settlements between 1991 and June 1996 are less than $2 million. As in the plaintiffs' claimed damages analysis, our data also reveal that many of these cases settle for a lower proportion of investor losses than suits with higher absolute settlements (Figure 5).

We estimate that at least 21 percent, and possibly 42 percent of these low-value settlements may well be nuisance suits, and are likely settling for nuisance value. We first note that about 9 percent of settlements are for less than $1 million. Of these, about two-thirds settle for an amount that is a much smaller fraction of total investor losses than the average for the whole sample. Most of the rest of the suits with settlements under $2 million also settle at less than the average percentage of investor losses but only about a third of them are at a much smaller fraction of total investor losses than the average for the whole sample. Notably, we find that the average settlement as a percentage of investor losses for the settlements between $1 million and $2 million is also lower than the average for the full sample.

E. Plaintiffs' Attorneys' Fees

In Table 9, we present the fees (and fees and expenses, when known) allocated to plaintiffs' attorneys. Not much here has changed over the past several years. Regardless of case

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avoidable defense costs unless the defendant recognizes some probability, however small, that a jury will rule in plaintiffs' favor." Joseph A. Grundfest. "Why Disimply?" *Harvard Law Review*, Vol. 108, 1995, pp. 740-741.

[16] Low value suits are not necessarily indicative of a lack of merit. For example, these settlements may represent the efficient outcome of negotiations between plaintiffs and defendants in cases where a jury trial would be particularly costly or risky. For a more detailed description of the theoretical reasoning, see Dunbar, et al., October 1995.

size, fees average approximately 32 percent of the settlement. This finding holds even for cases with settlements in excess of $50 million. For the period 1991 through June 1996, fees to plaintiffs' attorneys (in cases where fees could be separated from expenses) total $1 billion.

Cases for which an aggregated figure for fees and expenses was reported are presented in the bottom half of Table 9. In contrast to the findings for fees alone, the total of fees and expenses decline as a percentage of settlement value when settlement value exceeds $50 million. This result may indicate that expenses are relatively independent of size of settlement; that is, a case with a large settlement incurs about the same expenses as a small case. Given the small sample of cases in this category, however, we cannot draw any general conclusions about the pattern of expenses.

F. Case Dispositions and Filings by Defendants' Primary Industry

As is apparent from Table 10a, high-technology companies are a major focus of securities fraud class actions. In the past, almost one-third of the settlements have come from this sector. However, in 1995, only 27 percent of settlements came from the high-technology sector, down from 34 percent in 1994. And, so far in 1996, the percentage of settlements by high-technology companies has slowed considerably to 15 percent. In addition, as Table 10b demonstrates, dismissals as a percent of all dispositions in this sector are somewhat higher than the average dismissal rate. So although cases continue to be filed in this sector more than ever, either plaintiffs or defendants seem to be waiting to settle, perhaps waiting for a motion to dismiss to be decided.

Over the past six months, approximately 10 percent of settlements involved the financial and insurance sector (a group that excludes commercial banking), the highest percentage settled in this industry over the 1991 to 1996 time period. Similarly, filings in this sector over the past 10 months are at a higher percentage of the total filings than they have been since 1994. Also, as Table 10b demonstrates, dismissals as a percent of dispositions in this sector run at a much higher rate than the average dismissal rate and than the rate for other sectors we have classified. The data also suggest that plaintiffs' attorneys' fees as a percentage of the settlement

are slightly less than average for the finance and insurance industry category (Table 12a) and that settlement value is a higher percentage of investor losses in this sector (Table 11a). However, these results are heavily influenced by three large settlements, which seem to be pushing up the average value of settlements in this industry.

Dismissals as a percent of dispositions in the banking industry are at a much lower rate than the average for all industries. Filings for the banking industry in 1996 are at a lower percent of total filings than ever.

While simple descriptive statistics also suggest a difference in the ratio of settlement value to plaintiffs' claimed damages and to investor losses by industry, as shown in Table 11a, further statistical analysis is needed to discern if this difference is significant. We perform this analysis in Section IV.

G. The Influence of Circuits in Which Suits are Filed

Certain circuits are reputed to favor defendants or plaintiffs, either because of judicial philosophy or experience. In Table 11b, we examine the settlement data by circuit court. For the full sample, the largest number of cases continue to be settled in the Ninth Circuit (especially in California), which is to be expected since many high-technology companies are based in its jurisdiction. The Second and Third Circuits have the next highest number of cases settled, but each has less than half the total of the Ninth. (The Second Circuit includes New York and the Third Circuit includes Delaware, New Jersey and Pennsylvania.) Similarly, Table 11c shows that filings are by far the highest in the Ninth Circuit, with the Second and Third Circuits trailing, respectively.

Average settlements in the First Circuit (which includes Maine and Massachusetts) are less than $3 million, the smallest of any of the circuits. As shown in Table 11b, the settlement values as a percentage of investor losses have, over time, become more widely dispersed across

circuits, with an average of 9.1 percent but a range from 5.9 percent to 20.8 percent.[17] However, Table 12b shows that plaintiffs' attorneys' fees as a percentage of settlements vary only very slightly across circuits. Table 13 indicates that more judgments take place in the Fifth Circuit (including Texas) and the Ninth Circuit than elsewhere -- and that in general most judgments are in favor of plaintiffs. Table 15 indicates that the D.C. Circuit has the most judgments relative to dispositions; however, there were only six dispositions reported in this circuit. Of the remaining districts, the Fifth Circuit has the most judgments relative to dispositions. The Seventh Circuit (which includes Illinois) also has a relatively high rate of judgments. Also, in Table 15, we see that the dismissal rate is highest in the Fourth Circuit (which includes Maryland and Virginia) and the Seventh Circuit and lowest in the Third Circuit. In Table 11d, we see that the highest settlement rate (settlements as a percent of dispositions) is in the Ninth Circuit while the lowest settlement rate is in the Fifth Circuit. However, this observation is largely due to the high disposition rate for high-technology companies shown in Table 11e.

H. Type of Security Affected by Alleged Fraud

Settlement values are typically higher in cases involving more than one kind of security. Until 1994, settlements were considerably higher in cases involving bonds, options or preferred stock (Table 16). This pattern is to be expected since, other things equal, additional securities add to alleged investor losses and the potential damage exposure of the defendant. However, the data from 1993 to 1996 reveal a zigzag in the average settlement for cases involving bonds, from $23.9 million in 1993 to $3.7 million in 1994 to $23.4 million in 1995 to $6.5 million in 1996. A similar pattern exists for cases involving preferred stock and warrants. The data also show a dramatic increase in 1995 and then a decline in 1996 in the average settlements for cases involving units or options.

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[17] This analysis could not be performed using our plaintiffs' claimed damages database, since there are not enough observations to allow comparison across circuits.

I. Settlements by Type of Codefendant and Allocation of Settlements Across Codefendants

Defendants other than a corporation and its officers and directors are named in many cases. For example, underwriters are defendants in about 17 percent of the reported settlements (Table 17) and accountants in about 11 percent. In every year except 1991, average settlement value was higher when an accounting firm was named as a defendant than when there was no advisor codefendant. In every year but 1994 and 1996, the presence of an underwriter codefendant was associated with an elevated settlement value. And, in two of the three years when a law firm was codefendant, average settlements were also higher than in the absence of advisor codefendants. This pattern is consistent with the hypothesis that settlement values are higher when more "deep pockets" are targeted.

For 1994, we observe a much less dramatic settlement premium when an outside advisor was a codefendant. In fact, when an underwriter is named, the average settlement is *lower* than when no advisor codefendant was named. The suspected influence of the "deep pocket" is greatly diminished. We hypothesize that the *Central Bank* decision, which eliminated aiding and abetting counts in Rule 10b-5 securities class actions, is a factor in this change. However, accountant and underwriter advisor firm defendants add significantly to settlements again in 1995. It is likely that the presence of "deep pockets" is a factor once again since new pleadings have likely included accountants and underwriters not as aiders or abettors (for which *Central Bank* took away their securities fraud liability) but as primary defendants.

Finally, dynamic effects related to the Reform Act may be playing a role in settlements reached in the past 18 months. In particular, since accountants will only be held proportionately liable for cases filed following passage of the Reform Act, plaintiffs' attorneys have an incentive to maximize the settlement obtained from accounting defendants in cases filed prior to passage of the Reform Act, in which they may be held joint and severally liable. This may explain the increased average settlements in such cases in 1995. However, while the cases that have settled between January to June of 1996 were filed pre-Reform Act, these settlements were reached in the post-passage environment and so may have been checked by it. This may explain why the

presence of accountants defendants seems to contribute relatively less to settlement value in 1996 than in 1995 and why the presence of underwriters seems to add nothing. Again, the statistical analysis in Section IV is needed to investigate these hypotheses.

To investigate a related issue, we have compiled data concerning the allocation of settlement amounts paid by classes of defendants and those who cover or share in their exposure. We find that, for example, for a case in which a company and its officers and directors alone are named as defendants, an average of 70.0 percent of the settlement amount is paid from directors' and officers' liability insurance. The defendant company pays 29.7 percent of the settlement amount in these cases, while 0.3 percent is paid by officers and directors themselves. If we limit this sample to cases in which directors' and officers' liability insurance contributes to the settlement, the average contribution from this insurance represents 73.5 percent. If underwriters or accounting firm defendants are also named, directors' and officers' insurance contributes 29.6 percent, the defendant company pays 36.8 percent, the officers and directors pay 15.1 percent and the underwriter and/or accountants pay 18.6 percent. If no underwriter advisor is named but an accountant advisor is, directors' and officers' insurance on average pays 17.2 percent, the company pays 56.3 percent, individual directors and officers pay 0.1 percent and the accounting firm pays 26.4 percent.

Analyzing data on a separate sample of cases provided to the Congressional Record by Melvyn Weiss, we find that in suits in which the defendant company and its directors and officers alone are named with no advisor codefendants, on average directors' and officers' liability insurance pays 56.0 percent of the settlement, the company pays 43.3 percent and the individual directors and officers pay 0.7 percent.[18] Limiting this sample to only those cases where insurance contributes to the settlement, we find that the insurer contributes an average of 74.2 percent. In cases where an underwriter is also a defendant, insurance contributes an average of 74.0 percent, the company pays 23.5 percent and the underwriter(s) (and/or their insurance) pay 2.5 percent. Finally, in cases where an accounting defendant is named in addition to the company and its

[18] Based on data obtained from the Congressional Record from the Hearings Before the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs, United States Senate, pp. 507-525.

officers and directors, the insurer pays 62.5 percent, the company contributes 20.5 percent, the directors and officers 0.04 percent and the accounting defendant(s) (and/or their insurance) 17.0 percent.

J. Settlements in the Presence of Security Offerings

If a security offering occurred during the class period, a Section 11 and/or Section 12 count may be included in the case against the defendants. Since liability is easier to prove under Section 11 and Section 12 than under Section 10 (Rule 10b-5 usually requires scienter or gross negligence whereas Section 11 and 12 do not), and all offering shares are necessarily affected, higher settlement values are expected in cases with offerings. The data in Table 18 provide mixed evidence to support the hypothesis that the occurrence of an offering increases settlement value. In particular, the average settlement values for the two groups for the 1991 to 1994 period are very similar, with no consistent pattern governing which type of case has the larger average settlement value. In 1995 and 1996, however, the average settlement value appears to be higher for cases with offerings. Further statistical analysis is performed in Section IV to determine whether the presence of a security offering does indeed increase settlement value.

K. Age of Case and Settlement Value

Figure 6 depicts settlement values by age of case. We measure case age from the end of the class period to the announcement of the settlement in *SCAA* (the latter is a proxy for the settlement date.). We group cases by their age in years.

The settlement/loss ratios depicted in Figure 6 appear to increase with age up to a point but the greatest distinction seems to be for settlements made within a year of the class period end. These cases settle for much less relative to investor losses than all others. Perhaps defendants agree to pay more to settle as defense costs mount and plaintiffs pose a more credible threat to go to trial and obtain a jury verdict. The data are also consistent with the notion that plaintiffs are more willing to settle early on when they perceive the expected value of the case to be lower (because less is at issue and/or the case is weaker). In either event, we need to control for other factors that may affect settlement value. We do so in Section IV.

L. Presence of a Derivative Action

Another dataset we have compiled allocates settlement amounts between securities class action suits and concurrent derivative actions. In these settlements, we find that on average approximately 65 percent of the settlement fund was allocated to shareholder class action plaintiffs, with derivative action plaintiffs receiving the remaining 35 percent (before attorneys' fees and expenses). The median suit, however, allocated about 20 percent of the total settlement to the derivative action and 80 percent to the shareholder lawsuit.

M. Plaintiffs' Damage Estimate Versus Investor Losses

There has been some commentary that investor losses bear little relation to plaintiffs' damage estimates and therefore that it is inappropriate to draw conclusions about expected settlements from a sample of cases for which we have calculated investor losses. Beverly Moore, a proponent of this argument, asserts that plaintiffs' damage estimates are only about 27 percent of investor losses.[19] However, he obtains this figure by dividing the sum of plaintiffs' damages from a sample of cases by the sum of investor losses for those cases. Such a ratio can be misleading if the ratio of damage estimate to losses is very atypical in even one large investor losses case. We find this to be the case in Moore's calculation. When we calculate the ratio of the plaintiffs' damage estimate to the investor losses in each case, and then take an average of these ratios, we arrive at a figure of 59 percent, more than double the ratio of aggregates.

We find a reverse, though less pronounced, distortion using Moore's technique on our own plaintiffs' claimed damages database. In particular, for a sample of 46 cases for which we have data on both plaintiffs' claimed damages and investor losses, the ratio of total plaintiffs' damage estimates to total investor losses is 87 percent. However, the average case-specific ratio is 78 percent. The properly calculated figures provide evidence of a strong correlation between the two measures (86.7 percent).

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[19] Beverly C. Moore, Jr., "In Camera," *Class Action Reports*, Vol. 16, No. 2, March-April 1993, p. 250.

In any case, investor losses are not meant to represent plaintiffs' damages estimates. For the former to be useful in our analysis, they need only be affected by the same variables that influence plaintiffs' claimed damages, and in the same direction. As suggested above and shown more rigorously below, we find, with few exceptions, that this is so.

IV. STATISTICAL ANALYSIS OF SETTLEMENT DATA

The tabulations in Section III provide some clues about recent trends in securities class action settlements and the factors that are correlated with these settlements, but cannot be used to support any findings of causal relationships and cannot disentangle multiple influences on settlements. For example, we find that in 1994 and 1996, cases with underwriting codefendants have smaller average settlements than in similar cases in other years. However, this finding may be the result of random up and down movements in our sample, in which case we would not be able to draw any causal inference. Alternatively, we may find that the deviation from the average in these years is exceptionally large relative to the underlying variation in the data. If so, we can be more comfortable concluding that the cases in which underwriters were named were systematically lower in 1994 and 1996 and seek explanations for such a difference.

Settlements in one category may also appear higher than the average if we are not controlling for a variable that is actually responsible for the difference. For example, we observe that average settlements as a percentage of investor losses are markedly higher in cases where the defendant is a finance firm (19.7 percent versus an overall sample average of 9.1 percent). We may be tempted to conclude that the industry type is affecting this ratio. Suppose, however, that cases against finance firms frequently include an advisor codefendant or take an exceptionally long time to settle. The presence of these other factors may account for the observed higher ratio. Without further analysis, therefore, it would be a mistake to conclude that the expected settlement is higher *because* a defendant is in the financial industry.

To control for the effects of a number of variables simultaneously, we use multiple regression analysis. When it involves only the dependent variable and one potential explanatory (i.e., independent) variable, regression analysis is a statistical technique that can be described as

fitting a line through a scatter of points.[20] For example, the scatter of points might consist of settlement values (the dependent variable) in relation to investor losses (the explanatory variable). (Figure 4 depicts the line that results when we fit these values.) Although more difficult to conceptualize, we can also think of these points as being plotted not in two-dimensional but multi-dimensional space, where the other axes represent other potential explanatory variables, such as the presence or absence of advisor codefendants and the presence of a stock offering. Multiple regression analysis is akin to fitting a series of planes through a multi-dimensional scatter plot.

In the remainder of our study, we estimate the determinants of settlement size using multiple regression analyses. Using our expanded databases, we update the answers to questions considered in previous analyses, such as:

(1) Do settlements increase proportionately with the magnitude of plaintiffs' claimed damages or investor losses?

(2) Are settlements higher when codefendants with insurance coverage are named in the suit?

(3) Do the merits of a case affect the ratio of settlement size to investor losses?

(4) Do settlements vary, everything else constant, by industry segment and circuit court?

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20 This description of multiple regression analysis is somewhat simplified. In a binary form of regression analysis, the correlations are simply between two variables. In multiple regression analysis, the technique allows us to find the partial effect of one variable (an independent variable) on another (the dependent variable). In the present case, settlement size is the dependent variable. Investor losses and the existence of separately insured codefendants are two potential independent variables. The regression analysis allows us to estimate, for a given level of investor losses, the effect of the existence of an insured codefendant -- that is, the partial effect of insured codefendants -- on settlement size. The estimate of settlement size that is generated by the technique for any given value of investor losses and the existence of insured codefendants is a conditional expectation. It is our expectation of a settlement value conditioned on specific values of the independent variables. For descriptions of multiple regression analysis see Peter Kennedy, *A Guide to Econometrics*, Third Edition, The MIT Press, 1992; Samprit Chatterjee and Bertram Price, *Regression Analysis by Example*, Second Edition, John Wiley & Sons, Inc., 1991; and Michael O. Finkelstein and Bruce Levin, *Statistics for Lawyers*, Springer-Verlag, 1990.

(5) Finally, do specified other factors, such as the age of a case, the occurrence of a public offering during the class period or the use of non-cash payments to plaintiffs affect the settlement amount?

We also seek to determine whether the answers have changed when we consider only settlements reached in the most recent 18 months, i.e., from the beginning of 1995 to mid-1996. In doing so, we look for possible effects of the Reform Act that was proposed and passed during this time period.

A. Plaintiffs' Claimed Damages Versus Investor Losses: Does it Matter?

During the legislative hearings on the securities reforms, various participants noted that plaintiffs' estimate of damages is often different from investor losses. The point by itself is not controversial but raises the question of whether it is better to use a damage estimate rather than investor losses as a proxy for potential exposure in our regressions. In an earlier report, we found no marked difference between the performance of these two proxies. We reran this analysis using our expanded investor losses database (which now includes 331 settlements) and our expanded confidential database of plaintiffs' claimed damages (which now includes 46 settlements) and find this conclusion still holds.

In particular, for several important analyses we were able to obtain results using both the plaintiffs' claimed damages and the investor losses databases. A comparison of these results, which appear in Tables 19 through 21, indicates that the two measures perform in a very similar manner, with few exceptions.[21] As a result, we have a great deal of confidence in the output from the analyses that, due to data limitations (namely, a relatively small number of observations), we were able to perform using the investor losses variable as the only measure of potential exposure.

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[21] The primary exception is the significance of the merit-related proxy (i.e., the existence of government enforcement proceedings) in the plaintiffs' claimed damages sample. As discussed more fully below, with many more observations in the investor losses database we are able to consider the effect of the merit proxies on the most recent 18 months, which is where we find the most significant results. A similar subset for the plaintiffs' claimed damages database is not possible. Similarly, we are able to distinguish between relative severity of enforcement proceedings in the investor losses database, a disaggregation that may also contribute to this difference between the findings using the two databases.

B. What Explains Settlement Size?

As a first step in our multiple regression analysis, we seek to determine the shape of the curve that would best fit the settlement values when plotted against three explanatory variables: (1) plaintiffs' claimed damages or investor losses; (2) the presence of advisor codefendants; and (3) the age of the case. The initial estimates were made using a very flexible form that could assume different shapes with respect to investor losses such as linear, U-shaped, inverted U-shaped or L-shaped.[22] As in our earlier studies, the data indicate that, other things being equal, the size of settlements increases as plaintiffs' claimed damages or investor losses increase (not surprisingly) but at a declining rate. In other words, for example, the ratio of settlement size to plaintiffs' claimed damages tends to be lower in cases with higher plaintiffs' claimed damages

To quantify these effects, we estimated a simpler equation that performs as well or better statistically as the flexible form equation. The results for the plaintiffs' claimed damages database are shown in Regression 1 on Table 19; the results for the investor losses database are reported in Regression 4 on Table 20.[23]

The coefficient on plaintiffs' claimed damages is 0.57, which means that a doubling of estimated damages is accompanied by only a 48 percent increase in the expected settlement. The coefficient on investor losses is very similar, at 0.52, implying a 43 percent increase in the expected settlement with a doubling of investor losses. Both coefficients are highly statistically significant.

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[22] The form was $\ln(S) = a+b*IL+c*(1/IL)+d*D+u$ where: S = settlement value; IL = investor losses over the alleged class period; D = 1 if the case has at least one advisor firm codefendant (accounting firm, law firm or underwriter) and = 0 otherwise (an indicator variable); $\ln(\cdot)$ = the natural logarithm operator; a, b, c and d = estimated coefficients; u = stochastic term with expected value equal to zero, constant variance and which is uncorrelated among observations.

[23] The form of this regression is $\ln(S) = a+b*\ln(IL)+c*D+u$ where the variables are defined as in footnote 22. This simplified equation is in the form of logarithms. Although these are mathematical operations that most people do not routinely encounter in daily life, the coefficients on the independent variables in Table 20 have reasonably intuitive explanations.

These results suggest that settlements tend to rise with both plaintiffs' claimed damages and investor losses but at a decreasing rate. Figure 4 can help us visualize this effect. For example, Figure 4 shows that investor losses of $100 million are associated with expected settlements of $6.4 million. However, if investor losses double to $200 million, the solid line increases to only $9.1 million, a 43-percent increase in the expected settlement. Were the relationship strictly proportional, we would have expected a settlement of $12.0 million.

In these same regressions, we also examine the effect on settlements of naming "deep pocket" codefendants such as accounting firms, law firms and underwriters (who generally have additional insurance). For the sample of cases for which we have plaintiffs' claimed damages, we included an indicator variable that takes on a value of one if such an advisor codefendant was named and zero otherwise. We find that if such a codefendant is present, the expected settlement value increases by 56 percent. This effect is highly significant (Table 19).

For the larger sample of cases for which we calculated investor losses, we find similar results. The presence of an advisor codefendant generates a predicted settlement value that is approximately 50 percent higher than in cases without such a codefendant. In Regression 4 (Table 20), we had enough information to divide the advisor codefendant variable by type: accounting firm, law firm and underwriter. We find that for the entire 1991 to mid-1996 period, expected settlements increase by 75 percent if an accounting firm is named and by more than 25 percent if an underwriter is named.[24,25] Both results are statistically significant at the 95 percent confidence level.[26] That is, if there is, in fact, no systematic relationship between the presence of these advisor defendants and settlements value, there is only a remote probability that we would have found a difference of the magnitude we observe in our sample by chance alone.

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24 The formula for determining the effect of this variable in percentage terms equals (exp(c)-1)*100, where c is the coefficient on the indicator variable for whether an advisor was a named codefendant.

25 While settlement values are higher for cases involving advisor codefendants, we do not observe that the incremental costs are borne entirely by those defendants. As noted above, using data on the allocation of settlements across classes of defendants, we find that in cases naming underwriters and/or accountants, these parties contributed 18.6 percent of the aggregate settlement. Similarly, for cases in which an accounting defendant and no underwriter defendants are named, the advisor defendants contribute 26.4 percent.

26 This finding is based on a one-tailed test of statistical significance. See Tables, Notes and Sources, note 17.

Consequently, we have a high degree of confidence in our conclusions. The presence of a law firm codefendant, on the contrary, is not associated with a statistically significant effect on the settlement size. This variable is dropped from Regression 5.

These findings are consistent with the theory that settlement size is driven by the ability to pay. Among the assets available for settlement are the insurance covering defendant firms' officers' and directors' liability and insurance covering malpractice or errors and omissions for the advisor firms. As plaintiffs' claimed damages or investor losses mount, potential damages requested by plaintiffs would also increase.[27] However, the availability of insurance appears to constrain the size of settlements for cases that would have the higher damage claims.[28]

The most recent 18 months (1995 through mid-1996) show a substantial increase in the effect of an accounting codefendant on settlement size. In particular, settlements in which an accounting firm was also named are 151 percent more than settlements in cases with no advisor accounting firm (versus the 75 percent increase for the sample taken as a whole, shown in Regression 5). A smaller increase is observed in the effect of an underwriting codefendant in the past year and a half -- the presence of these codefendants now increases the settlement value an average of 32 percent (versus 26 percent for the sample as a whole). The 1995 data are largely responsible for this increase and may partially reflect the fact that accountants have been named as primary codefendants in the wake of the *Central Bank* decision. However, the results seem to be highly influenced by the settlements reached in three recent cases. When these cases are dropped from the sample, the effect is similar to that reached in earlier years.

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[27] See Section IV.A. above for a discussion of the relationship between damages and investor losses, as well as findings as to whether using plaintiffs' damage estimate rather than investor losses as an independent variable affects the statistical results.

[28] Note that in many Rule 10b-5 cases, insurance would not cover a jury award even though it would cover a settlement. Most insurance policies contain a fraud exclusion. Since a finding of liability usually requires a finding of scienter, these plans will not pay out. Various authors have pointed out the incentive effects of this type of insurance on settlements. Note that the same problem does not affect Section 11 cases because liability can be found for negligence, which is covered by insurance. See Janet Cooper Alexander, "Do the Merits Matter? A Study of Settlements in Securities Class Actions," *Stanford Law Review*, Vol. 43, February 1991, pp. 497-598.

We suspect that a decrease in the advisor effect observed in 1996 may reflect dynamics related to the Reform Act. In the Reform Act, proportionate liability for codefendants was enacted in most circumstances, which is designed to make these deep pockets inaccessible for cases in which these codefendants bear little, if any, responsibility. While the cases that settled in the first half of 1996 were not filed post-Reform Act, they were settled in the wake of its passage. We therefore hypothesize that they may have been influenced accordingly.

As in Recent Trends III, we find mixed results regarding the age of the case, using a variable that takes on a value of one if there is less than one year between the end of the class period and the reported settlement. For the sample of cases for which we have plaintiffs' claimed damages, we do not find that age has a significant effect on expected settlement value (Table 19). However, for the larger sample of cases for which we have calculated investor losses, we find that the cases that are resolved quickly have lower settlements, and that this reduction is statistically significant even when we control for the size of investor losses and the presence of an advisor codefendant (Table 20). In particular, settlements reached within a year are 25 percent lower than those that take longer to be resolved.

One reason for the positive association between cases more than one year old and settlement size may be that the judicial process tends to weed out weaker cases over time. Since older cases are those more likely to have survived motions to dismiss and for summary judgment, they pose a more credible threat of getting to a jury. The greater prospect of having to bear the costs of trial and live with a jury verdict may motivate defendants to settle for more. A second possible reason for the observed relationship is adverse selection by plaintiffs who may be inclined to settle sooner and for far less when they consider a case's expected value to be low. This, too, would give bigger and stronger cases more staying power.

Here again, we see a change when we compare those settlements that occurred between January 1995 and June 1996 to those that occurred earlier. While the measured effect of

settling within a year is still negative, the variable has lost statistical significance.[29] The explanation for this change may also lie in dynamics related to the Reform Act. In particular, the proposal and passage of the Reform Act may have distorted historically observed incentives with regard to settlements. In some cases, for example, parties may have wanted to settle prior to passage of the Reform Act, regardless of other case characteristics. Although enacted reforms would not apply to cases filed prior to passage of the Act, such an incentive might exist if passage of the Reform Act was expected to influence negotiations on cases filed prior to December 1995. In other cases, some parties may have wanted to draw out the litigation, since passage of the Reform Act was expected to shrink the pool of new cases. These two effects would tend to counterbalance one another, a result that is consistent with our observation that the average time from end of class period to reported settlement is relatively unchanged in the most recent year and a half. Nonetheless, these dynamics could have distorted the pattern of age and settlement size that we observed in past years.

Another factor, more of interest to the practitioner than the policymaker, is tested in Table 24 -- whether the settlement included securities or was all in cash. Settlements that include non-cash components were expected to be higher in value to compensate plaintiffs for accepting part or all of their award in a less-liquid form. We did not find clear evidence to support this conclusion, however. Regression 16 shows that while the expected value of settlements that include cash as well as non-cash components is higher, other things being equal, than that of settlements that are all cash, settlements that include no cash are actually lower (although this latter effect is only significant at an 83 percent confidence level).

While these results did not confirm our prior hypotheses, a consistent explanation exists. In particular, suppose completely non-cash settlements are agreed to in cases where the defendant is in significant financial distress and so has little cash on hand. In such cases, plaintiffs

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29 In an alternative set of regressions, we tested the relationship between the log of the years between class period end and report date and the settlement size. For the investor losses sample, we find a positive and statistically significant association between case age and settlement size for the sample as a whole. However, for the most recent 18 months, the result loses all statistical significance.

might recognize that they have no realistic prospect of a large settlement and adopt an attitude that they will "take what they can get." Under this hypothesis, settlements that involved no cash are expected to be smaller than either their all cash or part cash counterparts.

C. Finally, the Merits Matter . . . or Do They?

One of the most contentious debates that preceded passage of the Reform Act was over whether the merits matter. We can gain some insights into this issue by seeing if cases where there is reason to believe plaintiffs have a higher probability of a favorable jury verdict settle for more. First, we identify those cases where plaintiffs would appear to have a higher chance of winning and, second, we determine whether these cases have higher than average settlement amounts, all other things equal.

Although we do not have independent measures of the merits of the various cases, there are some attributes that are expected to be correlated with the likelihood of a pro-plaintiff verdict and, therefore, with high settlement values as a percentage of plaintiffs' claimed damages or investor losses. Below, we consider the presence of government enforcement actions and the presence of a security offering. In addition, there are some factors that should be unrelated to the size of settlement, since they should bear no correlation to the merits, namely industry and circuit court. Below, we consider the effect of these factors individually.

1. The Effect of Government Enforcement Actions on Settlements

One potential indicator of merit is the existence of a related investigation or independent enforcement action by a federal or state agency. Such activity, especially if it results in an order, an indictment or a plea, may reinforce the claims in the securities complaint.[30] We created and included in the regression a series of enforcement variables to test whether the presence of such an action was associated with higher settlement values. In particular, we divided

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[30] On the other hand, just because there is an enforcement action or an indictment does not mean there has been securities fraud. Management may have been very forthcoming to the investing public about the matters being investigated and the process of the investigation. See, for example, *General Development Corporation Bond Litigation* (91 Civ. 0594) (LMM) MDL890, Memorandum and Order, July 8, 1992.

the cases in the investor losses database into four levels from no action to three types of actions, ranging from simple investigation up to a finding that regulations had been violated or restitution had to be paid. Corresponding to these, we specified three separate indicator variables (low, moderate and high severity of enforcement action).

For the sample as a whole, we find weak results that are similar to those we found in prior years. However, for the sub-sample of the most recent settlements, the fact of severe government enforcement action has a large, positive and significant effect on expected settlement size.[31] In particular, these cases settle for nearly three times (172 percent more than) comparable cases with no enforcement action. Moderate enforcement proceedings are also shown to have a positive effect, though it is smaller in magnitude. In particular, cases in which orders to cease an activity were entered settled for more than two times (106 percent more than) comparable cases with no enforcement activity. Simple investigations, categorized in our sample as the lowest level of enforcement activity, are not associated with significantly higher settlements than cases with no activity.

A possible explanation for the significant results observed in the most recent settlements may also come from the passage of the Reform Act. While the Reform Act did not apply to cases settled in the most recent 18 months (all of which were filed prior to the December 1995 passage date), these settlements were reached while this legislation was pending or had recently been passed. As a result, it may have been used as a bargaining chip by defendants and plaintiffs alike, who might believe that passage of the Reform Act will affect decisions even in cases that were filed under the old law.

To ensure that our results regarding the merits were not driven by a few unusual observations, we performed an outlier test. For the sample of cases that settled between 1995 and

[31] We also tested the effect of enforcement at a more aggregated level, including an indicator variable that takes on a value of one if any activity occurred and zero otherwise. In this regression, we find that cases with "any merit," as measured by these three proxies, settle for nearly 50 percent more than similar cases with "no merit."

mid-1996, we find no single observation contributed significantly to the merits results. That is, the results are robust to standard outlier analyses.

2. The Effect of Public Offerings

A second attribute that might be expected to increase the likelihood of a pro-plaintiff verdict is whether the case involves a security offering. If so, there is the potential for a Section 11 or 12 claim in addition to the more common Rule 10b-5 claim.[32] Section 11 or 12 liability may be found if there has been negligence in the offering materials.[33] By contrast, Rule 10b-5 requires scienter -- an intent to deceive or defraud. As a result, plaintiffs have an easier burden of proof for liability under Section 11 than under Rule 10b-5, suggesting a verdict in their favor is more likely.

In Regression 7, using the investor losses database, we find the coefficient on the presence of an offering is unexpectedly negative and insignificant. However, cases involving offerings also typically have underwriters as named defendants and this unexpected result may be a result of difficulty in separating the two effects.[34] As shown in Regression 8, where we dropped the advisor codefendant variables from the regression, the effect of an offering, while positive, is still statistically insignificant. The result of the offering variable is also insignificant for the sample of 121 cases settled most recently. A possible explanation for the insignificance of the offering variable is that companies offering shares (particularly those with initial public offerings) would tend to be smaller, less well-endowed defendants. As a result, plaintiffs may recognize that the prospects for a large settlement are limited and decide to accept a smaller amount.

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[32] The information from *SCAA* on settlements does not always indicate whether a Section 11 claim was made and settled. It is possible that some cases with security offerings were the subject of only Rule 10b-5 counts.

[33] This assumes the other conditions for liability are also met: namely, the alleged public misrepresentations or omissions were material and plaintiffs' losses were caused by them.

[34] This condition is known as multicollinearity. If severe multicollinearity is present, all that can be determined from the regression is the sum of the effects of the collinear variables and not their individual effects.

3. Settlement Values in Banking Cases and Across Circuit Courts

We investigated the impact of industry segment data as an additional test of merit. Most complaints against banks in the early 1990s were based on a legal theory that courts have often found to be tenuous. Typical cases involved banks in the Northeast that announced significant loan loss provisions. The banks often attributed the increase in loan losses to a recent decline in the regional economy, but their stock prices often fell sharply and lawsuits followed. Though the factual circumstances varied from case to case, plaintiffs typically alleged, when such statements became erroneous at some future date, often as a result of the recession, that vague forecasts and assurances by management were material misrepresentations.[35]

Table 22 shows the results of adding a bank indicator variable to the regressions. With the expanded investor losses database, the banking variable is of the anticipated sign (negative) and is significant at the 90 percent (1-sided) confidence level.[36] Taken by itself, this regression suggests that the reported lack of merits in these cases do have an effect on settlement values.

However, there is more to the story -- many of the loan loss reserve cases were brought in circuits where, regardless of the defendant's industry, judges have been only lukewarm to plaintiffs. The Northeast banks are principally in Circuits 1 (New England) and 2 (New York). Consequently, the negative sign of the bank indicator variable may be due to the venue rather than due to the weaker-than-average legal theory. To test this, Regression 11 adds indicator variables

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35 In dismissing the complaint against Citibank in a loan loss reserve case, the District Court remarked that management's offense was "failing to show 'greater clairvoyance'." See *Ciresi v. Citicorp, et al.*, 90 Civ. 3374 (RO), September 17, 1991 [1991 U.S. Dist. LEXIS 16925]. Outside of banking, the soft forecast type of case is also relatively less successful. See *Adolph P. Raab, et al. v. General Physics Corporation, et al.*, August 26, 1993 [1993 U.S. App. LEXIS 21645].

36 With an alternative specification that includes investor losses as well as the inverse of investor losses, this banking variable is significant at the 99 percent (1-sided) confidence level. In particular, using this specification, cases with banking defendants are shown to settle for about 70 percent of cases with non-banking defendants. While this effect is statistically weaker when the identity of the circuit court is added to the regression, it is still significant at the 85 percent confidence level and indicates that such cases settle for 83 percent of non-banking defendant cases.

for all circuit courts except D.C.[37] As can be seen, the banking variable becomes insignificant -- and all of the circuit court variables are insignificant.

Two conclusions can be drawn. First, the analysis does not tell us that banking cases necessarily settle for less than other cases. Second, although venue may make a difference in whether a case will win or lose on appeal, it does not appear to make a significant difference in the value of a case that settles.

As a parenthetical matter, we also tested whether high-technology firms or non-bank finance firms settle for amounts different from the average, controlling for investor losses, the presence of advisor codefendant and age of the case. As shown in Regressions 12 and 13, for the database as a whole, there is no statistically significant difference between settlements reached by either high-technology or non-bank finance firms as compared with those in other industry segments. This conclusion also holds when controlling for the effects of circuit court venue.[38]

D. Summary of Findings

From this updated multiple regression analysis, we conclude: (1) as in earlier studies, settlements as a ratio of either plaintiffs' damages or investor losses tend to decline as plaintiffs' damage estimate or investor losses increases; (2) expected settlements are 75 percent higher when an accounting firm is named as a codefendant, and were even higher during 1995; (3) settlements reached in the past 18 months show that when state and federal investigations led to orders to cease activities or findings of violations and/or fines, settlement values are significantly higher (and this result is robust to an outlier analysis); (4) while age has a significant and positive impact on settlement value for the sample as a whole, older cases have not settled for significantly more than younger cases in the most recent year and a half; and (5) as in Recent Trends I, II and III, no

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[37] This means that the coefficients on the indicator variables for an included circuit may be interpreted as the percentage difference in average settlement in that circuit relative to the D.C. Circuit.

[38] When we use the alternative specification that includes investor losses and the inverse of investor losses, cases with high-technology defendants are shown to have higher settlements, a finding which is significant at the 95 percent (1-tailed) confidence level. However, when circuit court is added to the regression, this finding also becomes insignificant.

quantifiable factor, other than investor losses, plaintiffs' damage estimate and the existence of advisor codefendants has a consistent and statistically significant impact on settlement size.

We hypothesize that the differences between the patterns observed for settlements that occurred from 1991 to mid-1996 versus the subset of cases that settled between 1995 and mid-1996 may be attributable to the proposal and passage of the Reform Act. For example, the significant effect of our merits proxy may reflect the sentiment that passage of the Reform Act will affect negotiations and outcomes even in those cases filed before its enactment. Related dynamics may explain why cases with accounting codefendants were settled for significantly less in 1996 than in 1995. As cases filed after the passage of the Reform Act begin to settle, we will be able to test these and other related hypotheses more rigorously.

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Table 1

Federal Court Filings of Security Class Action Suits by Month[1]

Month	1991	1992	1993	1994	1995	1996	1991 to 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
January	13	8	9	15	14	8	67
February	8	15	9	12	12	5	61
March	18	15	16	23	20	10	102
April	15	14	20	22	12	15	98
May	15	17	11	23	10	8	84
June	12	31	17	16	7	11	94
July	13	13	14	23	12	12	87
August	16	19	12	17	15	16	95
September	6	17	10	17	12	5	67
October	16	14	13	17	13	14	87
November	8	15	11	13	14	NA	NA
December	13	14	16	22	21	NA	NA
Total: Jan-Dec	153	192	158	220	162	NA	NA
Total: Jan-Oct	132	163	131	185	127	104	842
Total: Apr-Oct	93	125	97	135	81	81	612

Table 2

Lag in Federal Filings
Between End of Class Period and Filing Date[2]

Filing Date	Average Lag (Days)	Number of Filings in Time Period	Number of Filings With Less than a 90-Day Lag	Percent of Filings With Less than a 90-Day Lag
				(Percent)
				(3) / (2)
	(1)	(2)	(3)	(4)
1/1/91-12/5/95	49.293	225	184	81.78%
12/6/95-12/22/95	10.750	8	8	100.00
12/23/95-10/31/96	63.316	57	46	80.70
1/1/91-10/31/96	50.986	290	238	82.07%

Table 3

Filings Increase With Adverse Market Movements[1,3]

Number of Monthly Filings as a Function of the Following Independent Variables	Coefficient	t-Statistic
	(1)	(2)
Constant Term	15.19	24.04
Return on Wilshire 5000	-36.83	-1.95
Prior Month Return on Wilshire 5000	-52.09	-2.76
Number of Observations	70	
Adjusted R-Squared	0.10	

Table 4

State Court Filings of Securities Class Action Suits by Month[4]

Month	1991	1992	1993	1994	1995	1996	1991 to 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
January	5	2	0	12	8	7	34
February	3	3	3	3	1	12	25
March	3	2	5	6	6	8	30
April	3	2	3	3	3	7	21
May	5	2	2	3	3	13	28
June	7	3	4	2	3	6	25
July	5	4	0	5	6	6	26
August	5	5	7	9	5	9	40
September	2	2	6	6	8	7	31
October	2	0	7	3	5	3	20
November	0	1	4	6	7	NA	NA
December	4	4	4	7	1	NA	NA
Total: Jan-Dec	44	30	45	65	56	NA	NA
Total: Jan-Oct	40	25	37	52	48	78	280

Table 5

Resolution of Securities Class Action Suits

Dispositions From All Sources[5]							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Number of Settlements	114	120	143	157	173	95	802
Number of Dismissals[6]	23	32	25	30	44	24	178
Number of Judgments[7]	1	4	5	4	3	1	18
Total Dispositions	138	156	173	191	220	120	998

Table 6

Settlements in Securities Class Action Suits Included in this Study[8]

	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Number of Settlements	48	78	90	102	105	52	475
Average Settlement	$6,349,801	$9,887,500	$8,323,556	$6,119,585	$10,619,174	$7,008,942	$8,271,182
Total Value of Settlements	$304,790,437	$771,224,971	$749,120,028	$624,197,710	$1,115,013,250	$364,464,961	$3,928,811,357
Median Settlement	$3,650,000	$4,575,000	$4,425,000	$3,662,500	$4,850,000	$3,926,951	$4,100,000
Number of Settlements Indicating Plaintiffs' Attorney Fees[9]	42	68	80	99	93	51	433
Average Plaintiffs' Attorney Fees[10]	$2,081,132	$2,713,391	$1,955,392	$2,012,360	$3,508,280	$2,287,203	$2,472,264

Table 7a

Settlements in Securities Class Action Suits Involving Common Stock Only[8,11] from Plaintiffs' Claimed Damages Database

Number of Settlements	46
Average Settlement	$7,827,102
Median Settlement	$5,000,000
Average Settlement as a Percentage of Plaintiffs' Claimed Damages	13.67%
Median Settlement as a Percentage of Plaintiffs' Claimed Damages	11.88%
Total Settlements as a Percentage of Total Plaintiffs' Claimed Damages	4.90%

Table 7b

Settlements in Securities Class Action Suits
Involving Common Stock Only[8,12]
from Investor Losses Database

	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Number of Settlements	41	67	70	87	85	47	397
Average Settlement	$4,905,864	$7,473,582	$5,122,697	$5,530,146	$7,363,391	$7,425,850	$6,338,753
Median Settlement	$3,000,000	$3,800,000	$4,000,000	$3,400,000	$4,000,000	$4,150,000	$3,703,902
Number of Cases for Which Investor Losses Were Calculated	29	45	57	79	78	43	331
Average Settlement for Cases for Which Investor Losses Were Calculated	$4,730,705	$7,380,888	$5,002,961	$5,599,624	$7,729,240	$7,781,743	$6,448,233
Median Settlement for Cases for Which Investor Losses Were Calculated	$2,450,000	$4,200,000	$4,000,000	$3,400,000	$4,316,000	$4,250,000	$3,900,000
Average Settlement as a Percentage of Investor Losses	15.30%	7.17%	7.65%	9.39%	8.85%	9.04%	9.13%
Median Settlement as a Percentage of Investor Losses	5.54%	4.85%	5.02%	6.50%	6.55%	6.84%	5.89%
Total Settlement as a Percentage of Total Investor Losses	3.66%	2.80%	2.63%	4.38%	4.67%	5.66%	3.86%

Table 8a

Ratio of Settlements to Plaintiffs' Claimed Damages by Settlement Amount[8,11]

Settlement Range	Number of Settlements	Total Value of Settlements	Average Value of Settlements	Average Settlement Value as a Percentage of Plaintiffs' Claimed Damages	Median Settlement Value as a Percentage of Plaintiffs' Claimed Damages
		---------------(Dollars)---------------		---------------------(Percent)---------------------	
	(1)	(2)	(3)	(4)	(5)
$0.00 - $1.99 million	9	$ 10,875,000	$ 1,208,333	11.86%	10.95%
$2.00 - $9.99 million	26	135,987,680	5,230,295	15.38	13.68
$10.00+ million	11	213,184,000	19,380,364	11.11	6.60
Total	46	$ 360,046,680	$ 7,827,102	13.67%	11.88%

Table 8b

Ratio of Settlements to Investor Losses by Settlement Amount[8,12]

Settlement Range	Number of Settlements	Total Value of Settlements	Total Investor Losses	Average Settlement as a Percentage of Investor Losses	Median Settlement as a Percentage of Investor Losses	Total Settlements as a Percentage of Total Investor Losses
		--------------------(Dollars)--------------------		--------------------(Percent)--------------------		
						(2) / (3)
	(1)	(2)	(3)	(4)	(5)	(6)
$0.00 - $0.99 million	29	$ 21,426,750	$ 996,264,189	8.21%	3.86%	2.15%
$1.00 - $1.99 million	57	83,687,752	1,862,319,073	8.67	6.12	4.49
$2.00 - $9.99 million	195	944,820,901	25,025,570,948	9.31	6.41	3.78
$10.00 - $49.99 million	47	896,629,780	25,407,930,557	9.12	5.40	3.53
$50.00+ million	3	187,800,000	2,058,883,337	15.77	9.00	9.12
Total	331	$ 2,134,365,183	$ 55,350,968,105	9.13%	5.89%	3.86%

Table 9

Plaintiffs' Attorney Fees[8,9,10]

Settlement Range	Number of Settlements	Total Value of Settlements	Total Attorney Fees	Average Attorney Fees as a Percentage of Settlement	Median Attorney Fees as a Percentage of Settlement
		--------(Dollars)--------		--------(Percent)--------	
	(1)	(2)	(3)	(4)	(5)
$0.00 - $0.99 million	37	$ 24,696,750	$ 7,617,600	30.38%	30.00%
$1.00 - $1.99 million	66	96,506,502	30,642,005	31.88	33.33
$2.00 - $9.99 million	245	1,184,141,901	381,149,262	32.11	33.33
$10.00 - $49.99 million	76	1,488,892,280	471,161,635	31.72	33.15
$50+ million	9	571,650,000	179,920,000	31.48	30.00
Total	433	$ 3,365,887,433	$ 1,070,490,502	31.84%	33.33%

Plaintiffs' Attorney Fees and Expenses[8,10,13]

Settlement Range	Number of Settlements	Total Value of Settlements	Total Attorney Fees and Expenses	Average Attorney Fees and Expenses as a Percentage of Settlement	Median Attorney Fees and Expenses as a Percentage of Settlement
		--------(Dollars)--------		--------(Percent)--------	
	(1)	(2)	(3)	(4)	(5)
$0.00 - $0.99 million	12	$ 8,340,000	$ 2,930,867	35.86%	34.17%
$1.00 - $1.99 million	10	14,600,000	4,625,958	32.02	31.67
$2.00 - $9.99 million	51	254,692,708	90,703,632	35.63	36.21
$10.00 - $49.99 million	31	575,640,000	208,189,333	35.84	33.33
$50+ million	3	194,000,000	39,625,000	20.05	18.80
Total	107	$ 1,047,272,708	$ 346,074,790	34.94%	34.64%

Table 10a

Settlements by Industry[8]

Number of Settlements							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
High-Technology	15	24	26	35	28	8	136
Commercial Banking	5	16	12	10	12	6	61
Finance & Insurance	4	4	7	5	3	5	28
Other	24	34	45	52	62	33	250
Total	48	78	90	102	105	52	475

Average Settlement							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(Dollars)						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
High-Technology	$ 4,699,667	$ 11,615,728	$ 6,530,673	$ 6,087,143	$ 10,002,321	$ 8,253,125	$ 7,928,014
Commercial Banking	2,991,364	3,933,438	11,455,417	4,627,000	4,732,500	6,033,333	5,813,390
Finance & Insurance	9,056,250	8,037,500	13,100,000	3,444,785	11,845,000	2,259,430	8,004,681
Other	7,629,734	11,687,132	7,781,278	6,685,650	11,977,794	7,604,328	9,087,414
Total	$ 6,349,801	$ 9,887,500	$ 8,323,556	$ 6,119,585	$ 10,619,174	$ 7,008,942	$ 8,271,182

Table 10b

Dismissals From All Reporting Sources by Industry[5,6]

Industry	Number	Percentage of Total Dismissals (Percent)	Total Number of Dispositions	Dismissals as a Percent of Dispositions (Percent) (1) / (3)
	(1)	(2)	(3)	(4)
High-Technology	50	28.09%	233	21.46%
Commercial Banking	8	4.49	97	8.25
Finance & Insurance	21	11.80	96	21.88
Other	99	55.62	572	17.31
Total	178	100.00%	998	17.84%

Table 10c

Federal Filings by Industry[1]

Number of Filings							
	1991	1992	1993	1994	1995	Jan-Oct 1996	1991 to Oct 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
High-Technology	24	45	43	52	34	28	226
Commercial Banking	13	9	7	5	4	2	40
Finance & Insurance	20	18	11	26	13	11	99
Other	96	120	97	137	111	63	624
Total	153	192	158	220	162	104	989

Filings by Industry as Percent of Total Filings							
	1991	1992	1993	1994	1995	Jan-Oct 1996	1991 to Oct 1996
	(Percent)						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
High-Technology	15.69%	23.44%	27.22%	23.64%	20.99%	26.92%	22.85%
Commercial Banking	8.50	4.69	4.43	2.27	2.47	1.92	4.04
Finance & Insurance	13.07	9.38	6.96	11.82	8.02	10.58	10.01
Other	62.75	62.50	61.39	62.27	68.52	60.58	63.09
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Table 11a

Ratio of Settlement to Plaintiffs' Claimed Damages and Investor Losses By Industry in Which Defendant Primarily Operates

Plaintiffs' Claimed Damages Database[8,11]

Industry	Number of Settlements	Total Value of Settlements	Average Value of Settlements	Average Settlement Value as a Percentage of Plaintiffs' Claimed Damages	Median Settlement Value as a Percentage of Plaintiffs' Claimed Damages
		--------(Dollars)--------		--------(Percent)--------	
	(1)	(2)	(3)	(4)	(5)
High-Technology	13	$ 79,150,000	$ 6,088,462	15.42%	11.54%
Banking/Finance	11	81,753,902	7,432,173	10.34	7.72
Other	22	199,142,778	9,051,944	14.30	14.21
Total	46	$ 360,046,680	$ 7,827,102	13.67%	11.88%

Investor Losses Database[8,12]

Industry	Number of Settlements	Total Value of Settlements	Total Investor Losses	Average Settlement Value as a Percentage of Losses	Median Settlement Value as a Percentage of Losses
		--------(Dollars)--------		--------(Percent)--------	
	(1)	(2)	(3)	(4)	(5)
High-Technology	103	$ 660,237,471	$ 14,392,294,860	7.69%	6.01%
Commercial Banking	37	167,341,818	7,219,097,347	9.65	5.17
Finance & Insurance	13	66,318,654	1,422,913,590	19.67	12.73
Other	178	1,240,467,240	32,316,662,307	9.09	5.84
Total	331	$ 2,134,365,183	$ 55,350,968,105	9.13%	5.89%

Table 11b

Ratio of Settlement to Investor Losses by Circuit[8,12]

Circuit	Number of Settlements	Total Value of Settlements	Average Settlement Value	Total Investor Losses	Average Settlement Value as a Percentage of Losses
		(Dollars)			(Percent)
	(1)	(2)	(3)	(4)	(5)
D.C.	2	$ 6,750,000	$ 3,375,000	$ 122,412,780	5.90%
First	21	62,343,902	2,968,757	1,254,275,553	8.63
Second	54	288,749,121	5,347,206	13,802,569,517	9.05
Third	39	171,447,596	4,396,092	4,020,331,470	10.32
Fourth	10	55,525,000	5,552,500	1,000,353,647	6.25
Fifth	14	121,300,500	8,664,321	1,976,361,144	8.14
Sixth	11	89,375,000	8,125,000	1,508,292,229	20.81
Seventh	15	114,933,784	7,662,252	3,296,242,670	9.47
Eighth	11	45,960,000	4,178,182	1,434,768,652	6.08
Ninth	123	945,515,280	7,687,116	21,077,892,317	8.29
Tenth	9	114,250,000	12,694,444	2,412,685,891	11.67
Eleventh	22	118,215,000	5,373,409	3,444,782,234	9.11
Total	331	$ 2,134,365,183	$ 6,448,233	$ 55,350,968,105	9.13%

Table 11c

Federal Filings by Circuit[1]

Circuit	Number of Filings		
	January 1991 - December 22, 1995	December 23, 1995 - October 1996	January 1991 - October 1996
	(1)	(2)	(3)
D.C.	3	0	3
First	39	8	47
Second	169	18	187
Third	96	9	105
Fourth	28	3	31
Fifth	61	9	70
Sixth	34	4	38
Seventh	44	2	46
Eighth	28	2	30
Ninth	295	29	324
Tenth	31	4	35
Eleventh	57	16	73
Total	885	104	989

Table 11d

Settlements as a Percent of Total Dispositions by Circuit[8,12]

Circuit	Number of Settlements	Total Number of Dispositions[5]	Settlements as a Percent of Dispositions
			(1) / (2)
			(Percent)
	(1)	(2)	(3)
D.C.	2	6	33.33%
First	21	60	35.00
Second	54	179	30.17
Third	39	112	34.82
Fourth	10	29	34.48
Fifth	14	53	26.42
Sixth	11	30	36.67
Seventh	15	43	34.88
Eighth	11	27	40.74
Ninth	123	272	45.22
Tenth	9	25	36.00
Eleventh	22	53	41.51
Unknown	0	24	0.00
Total	331	913	36.25%

Table 11e

Settlements as a Percent of Total Dispositions by Industry[8,12]

Industry	Number of Settlements	Total Number of Dispositions[5]	Settlements as a Percent of Dispositions
			(1) / (2)
			(Percent)
	(1)	(2)	(3)
High-Technology	103	233	44.21%
Commercial Banking	37	97	38.14
Finance & Insurance	13	96	13.54
Other	178	572	31.12
Total	331	998	33.17%

Table 12a

Plaintiffs' Attorney Fees by Industry[8,9,10]

Industry	Number of Settlements	Total Value of Settlements	Total Attorney Fee	Average Attorney Fee as a Percentage of Settlement
		--------------------(Dollars)--------------------		(Percent)
	(1)	(2)	(3)	(4)
High-Technology	128	$ 1,020,525,971	$ 325,883,965	32.38%
Commercial Banking	52	228,041,818	71,657,545	31.47
Finance & Insurance	24	119,988,654	34,704,035	30.05
Other	229	1,997,330,990	638,244,956	31.82
Total	433	$ 3,365,887,433	$ 1,070,490,502	31.84%

Table 12b

Plaintiffs' Attorney Fees by Circuit[8,9,10]

Circuit	Number of Settlements	Settlements as a Percentage of Total	Total Value of Settlements	Total Attorney Fees	Average Attorney Fee as a Percentage of Settlement
		(Percent)	--------(Dollars)--------		(Percent)
	(1)	(2)	(3)	(4)	(5)
D.C.	2	0.46%	$ 6,750,000	$ 2,200,000	31.67%
First	26	6.00	82,633,902	25,677,884	30.99
Second	69	15.94	440,285,121	139,037,770	31.48
Third	58	13.39	423,292,596	132,738,442	32.00
Fourth	12	2.77	75,325,000	23,716,667	32.78
Fifth	26	6.00	262,720,500	81,420,017	30.73
Sixth	13	3.00	120,875,000	36,921,000	31.00
Seventh	18	4.16	149,933,784	48,375,833	31.83
Eighth	12	2.77	52,175,000	17,640,500	32.47
Ninth	155	35.80	1,379,894,030	450,725,681	32.57
Tenth	13	3.00	203,650,000	62,038,333	32.13
Eleventh	29	6.70	168,352,500	49,998,375	29.92
Total	433	100.00%	$ 3,365,887,433	$ 1,070,490,502	31.84%

Table 13

Judgments[5,7]

Defendant	Circuit	Industry	Date Judgment Was Published	Judgment
	(1)	(2)	(3)	(4)
American Pacific Corp.[14]	Ninth	Other	17-Jan-96	Defendant
ATV Systems, Inc.	Ninth	High-Technology	01-Aug-93	Plaintiff: $4,500,000
Blinder, Robinson & Co.[15]	Third	Finance & Insurance	01-Mar-92	Plaintiff: $73,300,000
Charisma Communications Corp.	D. C.	High-Technology	01-Mar-95	Plaintiff: award of $100m against McCaw Cellular Communications, the defendant
Chesapeake Energy Corp.	State Court	Other	25-Feb-93	Plaintiff: $2.2m
Computer Associates International Inc.	Second	High-Technology	01-Jul-94	Defendant
Enserch Corp.	State Court	Other	01-Feb-93	Plaintiff: $62,034,598.68 ($57m + $3.42 per tendered unit)
Farm House Foods Corp.	Eighth	Other	01-Mar-94	Plaintiff: Diana Corp. has been found liable for defaulted bonds issued by Farm House
Granada 4 Limited Partnership	Fifth	Other	01-Apr-94	Plaintiff: $103,000,000 (jury found $77m in punitive damages + $26m in interest)
Information Resources, Inc.	Seventh	Other	01-Jul-94	Defendant
Koger Properties Inc.	Eleventh	Other	01-Oct-95	Plaintiff: $81,338,647 (Maximum of $10.05 per share) from Deloitte & Touche
Landmark Graphics Corporation	Fifth	Other	14-Jul-95	Defendant
Mellon Bank Corp.	Third	Commercial Banking	01-Sep-92	Plaintiff: $55,000,000
Melridge, Inc.	Ninth	Other	01-Dec-93	Plaintiff: judge upheld $57,315,681 jury judgment
Patton Oil Co.	State Court	Other	01-Apr-92	Plaintiff: $221,000 + accrued interest and expenses
Rexene Corp.	Fifth	Other	01-Aug-92	Plaintiff: $6,800,000 + Attorney fees
System Software Associates Inc.	Seventh	High-Technology	01-Aug-93	Defendant: cleared by jury
Virginia Bankshares	Fourth	Commercial Banking	27-Jun-91	Defendant

Table 14a

Dismissals[5,6]

Defendant	Circuit	Industry	Date Dismissal Was Published
	(1)	(2)	(3)
Absolute Entertainment Inc.	Third	High-Technology	01-Jun-95
Adobe Systems, Inc.	Ninth	High-Technology	01-Apr-92
AEL Industries Inc.	State Court	High-Technology	01-Mar-96
Alexander & Alexander Services	Second	Finance & Insurance	29-Feb-96
Allergan, Inc.	Ninth	Other	01-Jan-94
Alliance Pharmaceutical Corp.	Ninth	High-Technology	01-Jun-95
American Express Co.	Second	Finance & Insurance	23-Nov-93
American President Cos.	Ninth	Other	22-Nov-95
American Southwest Mortgage Investments Corp.	Ninth	Finance & Insurance	01-Oct-91
AmeriCredit Corp. (Urcarco, Inc.)	Fifth	Finance & Insurance	18-May-93
Amgen Inc.	Ninth	High-Technology	01-May-94
Amoskeag Company	State Court	Other	01-Nov-93
Apple Computer	Ninth	High-Technology	01-Oct-91
Apple Computer Inc.	Ninth	High-Technology	09-May-95
Atlantic Financial Federal	Third	Finance & Insurance	01-Apr-93
Bally Manufacturing Corp.	Seventh	Other	4-Feb-92
Baltimore Bancorp	Fourth	Commercial Banking	01-Apr-94
BankAtlantic Bancorp	Eleventh	Commercial Banking	19-Jan-96
Bernard Chaus Inc.[16]	Second	Other	01-Oct-92
Boettcher & Co.	Seventh	Finance & Insurance	3-Jan-91
Bolar Pharmaceutical Co.	Third	Other	01-Aug-91
Bon-Ton Stores Inc.	Third	Other	01-Jun-93
Browning-Ferris Industries, Inc.	Fifth	Other	01-Feb-95
Buffets, Inc.	Eighth	Other	01-Jun-96
Buttrey Foods and Drug Stores Co.	Ninth	Other	01-Feb-94
Carver Federal Savings Bank	Second	Commercial Banking	01-Feb-96
Cascade International	Eleventh	Other	27-Jun-95

Table 14a

Dismissals[5,6]

Defendant	Circuit	Industry	Date Dismissal Was Published
	(1)	(2)	(3)
Cerplex Group Inc.	Ninth	Other	02-Oct-95
Chicago Board Options Exchange Inc.	Seventh	Finance & Insurance	01-Oct-92
Chipcom Corp.	First	High-Technology	01-Jun-96
CII Financial	State Court	Finance & Insurance	29-Sep-95
Citicorp	Second	Commercial Banking	01-Mar-92
CompUSA Inc.	Fifth	Other	02-Nov-95
Compuware Corp.	Sixth	High-Technology	01-Jul-95
Concord Camera Corp.	Second	Other	01-May-96
Connely Containers, Inc.	Third	Other	30-Aug-91
Corning Inc.	Second	Other	16-May-96
Cypress Semiconductor Inc.	Ninth	High-Technology	01-Jul-95
Data General Corp.	First	High-Technology	01-Feb-92
Data Race Inc.	Fifth	High-Technology	30-Oct-95
Denelcor, Inc.	Tenth	High-Technology	01-Mar-91
Digital Equipment Corporation	First	High-Technology	01-Dec-91
Drug Screening, Inc.	Third	Other	20-Mar-95
DSC Communications Corp.	Fifth	Other	01-Apr-93
Dycom Industries Inc.	Eleventh	Other	01-Aug-92
Eastland Financial Corp (& MNC Financial, Inc.)	First	Commercial Banking	01-Feb-91
Education Alternatives Inc.	Eighth	Other	01-Jun-95
EMC Corp	First	High-Technology	01-Apr-92
Empire of Carolina Inc.	State Court	Other	01-Mar-96
Exabyte Corp.	Tenth	High-Technology	01-Jul-93
First Chicago Corp.	Seventh	Commercial Banking	17-Mar-92
First Financial Management Corp.	Eleventh	Finance & Insurance	01-Apr-92
First Investor Corp.	Fourth	Finance & Insurance	01-Feb-93
Fishbach Corp.	Second	Other	16-Apr-91

Table 14a

Dismissals[5,6]

Defendant	Circuit	Industry	Date Dismissal Was Published
	(1)	(2)	(3)
FNB Rochester Corp.	Second	Commercial Banking	01-Feb-94
Forest Laboratories, Inc.	Second	Other	17-Jan-96
GATX Corp.	Seventh	Other	21-Sep-94
General Development Corp.	Second	Other	01-Aug-92
General Electric Co.	Second	Other	06-Oct-95
General Physics Corp.	Fourth	Other	01-Oct-93
Go-Video, Inc.	Ninth	Other	01-Sep-93
Goulds Pumps, Inc.	Second	Other	14-Sep-95
Harley-Davidson Inc.	Seventh	Other	01-Apr-93
Hasbro Inc.	State Court	Other	16-May-96
HBO & Company	Eleventh	Other	01-May-94
Health Care Compare Corp	Seventh	Other	24-Jan-96
Health Care Compare Corp.	Seventh	Other	01-Jul-94
Health Professionals Inc.	Eleventh	Other	22-May-95
Herbalife International, Inc.	Ninth	Other	26-Jan-96
Hewlett-Packard Co.	Ninth	High-Technology	01-Apr-93
Hologic Inc.	Eighth	High-Technology	01-May-93
HomeTown Buffet Inc.	Ninth	Other	27-Jul-95
Howteck Inc.	First	High-Technology	19-May-92
Hurco Cos. Inc.	Seventh	Other	12-Apr-95
Hyperion Trusts	Second	Finance & Insurance	14-Jul-95
ICH Corp.	Sixth	Finance & Insurance	01-Feb-91
Ideon Group Inc.	Eleventh	Other	11-Jun-96
Immunomedics Inc.	Third	Other	01-May-95
Instron Corp.	State Court	High-Technology	09-Jan-91
Intel Corporation	Ninth	High-Technology	01-Apr-95
Janex International Inc.	Ninth	Other	17-May-96

Table 14a

Dismissals[5,6]

Defendant	Circuit	Industry	Date Dismissal Was Published
	(1)	(2)	(3)
JLG Industries Inc.	Third	Other	13-Oct-92
Landmark Limited Partnership	State Court	Other	25-Sep-95
Legent Corp.	Fourth	High-Technology	01-Mar-94
Lifecore Biomedical Inc.	Eighth	Other	01-Aug-93
Lotus Development Corp.	First	High-Technology	01-Mar-92
Lyondell Petrochemical Co.	Ninth	Other	01-Apr-93
Madge N.V. Inc.	Second	High-Technology	01-Dec-93
Marion Merrell Dow Inc.	Eighth	Other	01-Aug-94
Marriott Corp.	Fourth	Other	01-Feb-95
Matthews & Wright Group's Non-Taxable Bonds	Second	Finance & Insurance	01-Jun-95
Maverick Tube Corp	Second	Other	01-Dec-91
Maxicare Health Plans, Inc.	Ninth	Other	01-Oct-93
Medco Research Inc.	Ninth	Other	01-Nov-94
Medco Research Inc.	Ninth	Other	01-Feb-91
Medstone International, Inc. (Cytocare Inc.)	Ninth	Other	01-Jun-92
Merisel, Inc.	Ninth	Other	01-May-95
Mesa LP	Ninth	Other	13-Aug-91
Metex Corp. and Metropolitan Consolidated Industries, Inc. (n/k/a United Capital Corp.)	Second	Other	01-Aug-93
Micrografx Inc.	Fifth	High-Technology	01-Apr-95
Microtest Inc.	Ninth	High-Technology	01-Dec-93
MIPS Technologies Inc.	Ninth	High-Technology	01-Aug-94
Mizlou Communications Corp.	Second	Other	22-Jun-92
MNC Financial, Inc.	Fourth	Commercial Banking	01-Feb-91
Monro Muffler Brake Inc.	Second	Other	01-Jun-92
Monsanto Co.	Seventh	Other	10-Sep-91
MultiServ	Second	Other	1-Apr-95

Table 14a

Dismissals[5,6]

Defendant	Circuit	Industry	Date Dismissal Was Published
	(1)	(2)	(3)
NL Industries, Inc.	Second	Other	01-Mar-91
Novell Inc.	Tenth	High-Technology	27-May-94
Numerex Corp.	Third	Other	25-Jan-96
NView Corp.	Fourth	High-Technology	01-Oct-93
NYNEX	Second	Other	19-Oct-91
One Price Clothing Stores, Inc.	Fourth	Other	11-Jul-95
Optical Data Systems Inc.	Fifth	High-Technology	01-Jul-94
Organogenesis Inc.	First	High-Technology	14-Mar-96
PetSmart Inc. Petstuff Inc.	State Court	Other	01-Jul-95
Philip Morris Cos.	Second	Other	01-Jan-95
Philips Electronics N.V.	Second	Other	01-Feb-93
Pinkerton's Inc.	Ninth	Other	01-Dec-92
Polyphase Corporation	Fifth	Other	15-May-96
Protocol Systems Inc.	Ninth	Other	01-Nov-92
Providential Corp.	Ninth	Finance & Insurance	17-Nov-92
Pyramid Technology Corp.	Ninth	High-Technology	01-Sep-94
Pyxis Corp.	Ninth	High-Technology	01-Aug-94
QMS Inc.	Eleventh	High-Technology	01-Sep-92
Quaker Oats Co.	Third	Other	23-May-96
Quality Food Centers Inc.	Ninth	Other	21-Dec-95
R. G. Dickinson & Co.	Tenth	Finance & Insurance	13-Aug-93
RAC Mortgage Investment Corp.	Fourth	Finance & Insurance	01-Jun-91
Rainbow Technologies Inc.	Ninth	High-Technology	01-Oct-94
Recognition Equipment Inc.	State Court	Other	01-May-91
Refco Inc.	Seventh	Finance & Insurance	01-Oct-94
Regency Cruises, Inc.	State Court	Other	01-Jun-94
Regeneron Pharmaceuticals	Second	High-Technology	01-May-92

Table 14a

Dismissals[5,6]

Defendant	Circuit	Industry	Date Dismissal Was Published
	(1)	(2)	(3)
Riddell Sports Inc.	Third	Other	01-Nov-92
Royal Appliance Manufacturing Co.	Sixth	Other	01-Apr-94
S3 Inc.	Ninth	High-Technology	01-Jul-95
SafeCard Services	Eleventh	Other	13-Dec-91
Salomon Brothers Inc.	Second	Finance & Insurance	01-May-95
Sante Fe Pacific Corp.	State Court	Other	01-Jul-95
Sbarro Inc.	Second	Other	27-Dec-95
Scripps Howard Broadcasting Co.	State Court	Other	9-Aug-95
Seagate Technology	Ninth	High-Technology	10-Feb-95
Shepherd Insurance Group	D. C.	Finance & Insurance	01-May-95
Silicon Graphics, Inc.	Ninth	High-Technology	01-May-92
Smith Micro Software Inc.	Ninth	High-Technology	06-May-96
Sofamor Danek Group, Inc.	Sixth	Other	16-Oct-95
Sprint Corp	Tenth	Other	20-Mar-92
St. Jude Medical Inc.	Eighth	Other	18-Nov-94
STAC Electronics	Ninth	High-Technology	01-Aug-94
Stokely USA Inc.	Seventh	Other	28-Mar-96
Stone & Webster Inc.	First	Other	06-Jul-94
Stratosphere Corp.	Ninth	Other	01-May-95
Stratus Computer	First	High-Technology	01-May-92
Structural Dynamics Research Corp.	Sixth	High-Technology	01-Aug-94
Summa Four Inc.	First	Other	16-Nov-95
SynOptics Communications Inc., Bay Networks Inc.	State Court	High-Technology	01-May-96
Ted Bates Worldwide	Second	Other	14-Oct-91
Tektronix, Inc.	Ninth	High-Technology	01-Sep-92
Teledyne, Inc.	State Court	Other	26-Aug-92
Telxon Corporation	Sixth	High-Technology	01-Oct-95

Table 14a

Dismissals[5,6]

Defendant	Circuit	Industry	Date Dismissal Was Published
	(1)	(2)	(3)
Travelers Corp.	Second	Finance & Insurance	01-Sep-92
Trump Taj Mahal Associates Limited Partnership	Third	Other	22-Oct-93
Tseng Labs Inc.	Third	High-Technology	22-Mar-96
U. S. Long Distance Corp.	Fifth	Other	01-May-94
Unimation/Condec	State Court	Other	6-Mar-91
Value Merchants Inc.	Seventh	Other	01-Sep-94
Verifone, Inc.	Ninth	High-Technology	01-May-92
Viewlogic Systems Inc.	First	High-Technology	19-Mar-96
Wal-Mart	Second	Other	2-Oct-95
Washington Energy Co.	Ninth	Other	01-Sep-94
Western Investment Real Estate Trust	Ninth	Finance & Insurance	01-Mar-93
Wickes Companies	State Court	Other	01-Aug-92
Wilton Enterprises, Inc.	Seventh	Other	01-Jun-92
With Design in Mind International Inc.	Ninth	Other	01-Jul-94
WPP Group PLC	Second	Other	01-Jun-94
Zenith Laboratories Inc.	State Court	Other	01-Nov-94
Zeos International Ltd.	First	High-Technology	01-May-93

Table 14b

Summary of Dismissals By Circuit[5,6]

Circuit	Number of Dismissals	Dismissals as a Percentage of Total
		(Percent)
	(1)	(2)
State Court	17	9.55%
D. C.	1	0.56
First	13	7.30
Second	32	17.98
Third	13	7.30
Fourth	9	5.06
Fifth	9	5.06
Sixth	6	3.37
Seventh	14	7.87
Eighth	6	3.37
Ninth	44	24.72
Tenth	5	2.81
Eleventh	9	5.06
Total	178	100.00%

Table 15

Federal Dismissals and Judgments By Circuit
January 1991 through June 1996[5]

Circuit	Total Federal Dismissals[6]	Total Federal Dispositions	Dismissals as a Percentage of Dispositions	Total Federal Judgments[7]	Judgments as a Percentage of Dispositions
			(Percent)		(Percent)
			(1) / (2)		(4) / (2)
	(1)	(2)	(3)	(4)	(5)
D.C.	1	6	16.67%	1	16.67%
First	13	60	21.67	0	0.00
Second	32	179	17.88	1	0.56
Third	13	112	11.61	2	1.79
Fourth	9	29	31.03	1	3.45
Fifth	9	53	16.98	3	5.66
Sixth	6	30	20.00	0	0.00
Seventh	14	43	32.56	2	4.65
Eighth	6	27	22.22	1	3.70
Ninth	44	272	16.18	3	1.10
Tenth	5	25	20.00	0	0.00
Eleventh	9	53	16.98	1	1.89
Unknown	0	24	0.00	0	0.00
Total	161	913	17.63%	15	1.64%

Table 16

Settlements by Type of Security Involved[8]

Number of Settlements							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Only Common Stock	41	67	70	87	85	47	397
Bonds	2	6	11	3	11	1	34
Limited Partnerships	0	0	0	1	0	0	1
Options	3	4	8	5	5	2	27
Preferred Stock	3	0	3	4	2	2	14
Units	0	0	0	1	4	1	6
Warrants	0	1	3	4	5	1	14
Rights	0	0	0	0	0	1	1

Average Settlement							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(Dollars)						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Only Common Stock	$ 4,905,864	$ 7,473,582	$ 5,122,697	$ 5,530,146	$ 7,363,391	$ 7,425,850	$ 6,338,753
Bonds	8,162,500	22,957,500	23,923,409	3,733,333	23,393,182	6,500,000	20,360,368
Limited Partnerships	NA	NA	NA	8,250,000	NA	NA	8,250,000
Options	15,708,333	33,125,000	12,509,375	20,085,000	38,730,000	2,725,000	21,452,778
Preferred Stock	16,141,667	NA	52,750,000	8,106,250	13,647,500	4,750,000	19,706,786
Units	NA	NA	NA	1,100,000	18,100,000	500,000	12,333,333
Warrants	NA	250,000	9,594,583	4,737,500	13,110,000	3,000,000	8,323,839
Rights	NA	NA	NA	NA	NA	6,500,000	6,500,000

Table 17

Settlements by Type of Codefendant Involved[8]

Number of Settlements							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Accounting Firm	4	10	11	10	12	5	52
Law Firm	0	4	2	0	1	0	7
Underwriter	9	14	17	15	16	9	80
No Advisor Codefendant	37	60	67	79	82	38	363

Average Settlement							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(Dollars)						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Accounting Firm	$ 5,500,000	$ 14,432,000	$ 16,359,207	$ 8,586,150	$ 33,619,583	$ 11,244,200	$ 17,149,784
Law Firm	NA	15,811,250	15,021,250	NA	2,285,000	NA	13,653,214
Underwriter	10,115,000	13,438,929	14,533,971	4,426,667	15,511,563	5,570,378	11,137,199
No Advisor Codefendant	5,677,174	9,324,666	6,682,593	6,164,382	8,036,930	6,792,383	7,221,472

Table 18

Settlements by Whether Security Offering Was Made During Class Period[8]

Number of Settlements							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
No Offering	34	60	72	75	72	30	343
Offering	14	18	18	27	33	22	132

Average Settlement							
	1991	1992	1993	1994	1995	Jan-June 1996	1991 to June 1996
	(Dollars)						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
No Offering	$ 5,406,778	$ 10,032,333	$ 7,422,188	$ 6,706,537	$ 9,827,441	$ 6,747,575	$ 7,968,400
Offering	8,640,000	9,404,722	11,929,028	4,489,164	12,346,591	7,365,351	9,057,956

<u>**Table 19**</u>

Settlements Increase with (1) Plaintiffs' Claimed Damages (But at a Declining Rate), (2) the Presence of an Advisor Codefendant and (3) Severe Enforcement Actions

Log of Settlement Value as a Function of the Following Independent Variables	Results from Regression Number:					
	1		2		3	
	Coefficient (1)	t-Statistic[17] (2)	Coefficient (3)	t-Statistic[17] (4)	Coefficient (5)	t-Statistic[17] (6)
Constant Term	5.32	4.35	6.11	5.10	6.15	5.11
Log of Plaintiffs' Claimed Damages[11]	0.57	8.17	0.52	7.60	0.52	7.63
Advisor Was a Defendant[18]	0.45	1.83	0.51	2.18	0.53	2.19
Indicator Variable for Settlements Within One Year of Filing[19]	0.00	0.02	0.03	0.12	--	--
Log of Years from End of Class Period to Publication in *Securities Class Action Alert*	--	--	--	--	-0.05	-0.35
Potential Section 11 Exposure[20,21]	--	--	0.01	0.05	0.02	0.06
Severity of Enforcement Action:						
Low[22]	--	--	-0.31	-1.10	-0.27	-0.94
Moderate[23]	--	--	--	--	--	--
High[24]	--	--	1.62	2.65	1.61	2.66
Number of Observations	46		46		46	
Adjusted R-Squared	0.61		0.66		0.66	

Table 20

Settlements Increase with (1) Investor Losses (But at a Declining Rate), (2) the Presence of an Advisor Codefendant and (3) Age of Case at Settlement

Log of Settlement Value as a Function of the Following Independent Variables	Results from Regression Number:					
	4 (Jan 1991 - Jun 1996)		5 (Jan 1991 - Jun 1996)		6 (Jan 1995 - Jun 1996)	
	Coefficient	t-Statistic[17]	Coefficient	t-Statistic[17]	Coefficient	t-Statistic[17]
	(1)	(2)	(3)	(4)	(5)	(6)
Constant Term	5.78	11.20	5.77	11.24	4.55	5.14
Log of Investor Losses[12]	0.52	18.21	0.52	18.30	0.59	12.09
Underwriter Advisor was a Defendant[25]	0.24	2.21	0.23	2.20	0.28	1.62
Accounting Advisor was a Defendant[26]	0.56	4.32	0.56	4.32	0.92	4.44
Law Firm Advisor was a Defendant[27]	-0.10	-0.25	--	--	--	--
Indicator Variable for Settlements Within One Year of Filing[19]	-0.31	-2.73	-0.31	-2.73	-0.26	-1.41
Number of Observations	331		331		121	
Adjusted R-Squared	0.52		0.52		0.59	

Table 21

Neither Potential Section 11 Exposure Nor Government Enforcement Actions Increase the Value of Settlements

Log of Settlement Value as a Function of the Following Independent Variables	Results from Regression Number:					
	7		8		9	
	Coefficient	t-Statistic[17]	Coefficient	t-Statistic[17]	Coefficient	t-Statistic[17]
	(1)	(2)	(3)	(4)	(5)	(6)
Constant Term	5.81	11.30	5.93	11.15	5.77	11.18
Log of Investor Losses[12]	0.52	18.24	0.51	17.53	0.52	18.21
Underwriter Advisor was a Defendant[25]	0.36	2.44	--	--	0.24	2.26
Accounting Advisor was a Defendant[26]	0.53	4.05	--	--	0.55	4.22
Indicator Variable for Settlements Within One Year of Filing[19]	-0.29	-2.56	-0.34	-2.89	-0.31	-2.66
Potential Section 11 Exposure[20,21]	-0.15	-1.21	0.02	0.19	--	--
Severity of Enforcement Action:	--	--	--	--		
Low[22]	--	--	--	--	0.01	-0.04
Moderate[23]	--	--	--	--	0.00	0.01
High[24]	--	--	--	--	0.40	1.28
Number of Observations	331		331		331	
Adjusted R-Squared	0.52		0.49		0.52	

Table 22

Industry of Defendant is Not Significant Once Circuit in Which Suit Was Filed Is Considered

Log of Settlement Value as a Function of the Following Independent Variables	Results from Regression Number:							
	10		11		12		13	
	Coefficient	t-Statistic[17]	Coefficient	t-Statistic[17]	Coefficient	t-Statistic[17]	Coefficient	t-Statistic[17]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Constant Term:								
All Circuits	5.83	11.32	--	--	5.78	11.22	--	--
D. C. Circuits	--	--	5.86	8.36	--	--	5.82	8.33
Log of Investor Losses[12]	0.52	18.20	0.51	17.78	0.52	18.18	0.51	17.74
Underwriter Advisor was a Defendant[25]	0.21	1.98	0.23	2.10	0.23	2.20	0.24	2.19
Accounting Advisor was a Defendant[26]	0.55	4.26	0.51	3.94	0.56	4.30	0.52	3.96
Indicator Variable for Settlements Within One Year of Filing[19]	-0.32	-2.82	-0.33	-2.86	-0.31	-2.73	-0.32	-2.82
Banking Firm Was a Defendant[28]	-0.16	-1.28	-0.08	-0.62	--	--	--	--
High-Technology Firm Was a Defendant[29]	--	--	--	--	0.03	0.31	0.00	-0.01
Circuit in Which Suit Was Filed:[30]								
First	--	--	-0.12	-0.24	--	--	-0.11	-0.23
Second	--	--	-0.07	-0.13	--	--	-0.04	-0.09
Third	--	--	0.05	0.10	--	--	0.07	0.13
Fourth	--	--	-0.06	-0.12	--	--	-0.04	-0.07
Fifth	--	--	0.07	0.14	--	--	0.11	0.20
Sixth	--	--	0.46	0.88	--	--	0.49	0.94
Seventh	--	--	0.25	0.48	--	--	0.28	0.55
Eighth	--	--	-0.27	-0.52	--	--	-0.24	-0.45
Ninth	--	--	0.13	0.27	--	--	0.17	0.34
Tenth	--	--	0.46	0.86	--	--	0.49	0.92
Eleventh	--	--	0.09	0.18	--	--	0.12	0.25
Number of Observations	331		331		331		331	
Adjusted R-Squared	0.52		0.53		0.52		0.53	

Table 23

Industry of Defendant is Not Significant
Once Circuit in Which Suit Was Filed Is Considered

Log of Settlement Value as a Function of the Following Independent Variables	Results from Regression Number: 14		15	
	Coefficient	t-Statistic[17]	Coefficient	t-Statistic[17]
	(1)	(2)	(3)	(4)
Constant Term:				
All Circuits	5.78	11.13	--	--
D. C. Circuits	--	--	5.81	8.29
Log of Investor Losses[12]	0.52	18.09	0.51	17.66
Underwriter Advisor was a Defendant[25]	0.24	2.21	0.23	2.17
Accounting Advisor was a Defendant[26]	0.56	4.31	0.52	3.94
Indicator Variable for Settlements Within One Year of Filing[19]	-0.31	-2.73	-0.32	-2.81
Financial Firm Was a Defendant[31]	-0.03	-0.16	0.03	0.13
Circuit in Which Suit Was Filed:[30]				
First	--	--	-0.11	-0.23
Second	--	--	-0.05	-0.09
Third	--	--	0.07	0.13
Fourth	--	--	-0.04	-0.07
Fifth	--	--	0.10	0.20
Sixth	--	--	0.49	0.94
Seventh	--	--	0.28	0.55
Eighth	--	--	-0.24	-0.45
Ninth	--	--	0.17	0.34
Tenth	--	--	0.49	0.92
Eleventh	--	--	0.12	0.25
Number of Observations	331		331	
Adjusted R-Squared	0.52		0.53	

Table 24

The Effect of Non-Cash Payments on Settlement Values Is Inconclusive

Log of Settlement Value as a Function of the Following Independent Variables	Results from Regression Number: 16	
	Coefficient	t-Statistic[17]
	(1)	(2)
Constant Term	5.62	10.95
Log of Investor Losses[12]	0.53	18.58
Underwriter Advisor was a Defendant[25]	0.23	2.16
Accounting Advisor was a Defendant[26]	0.53	4.15
Indicator Variable for Settlements Within One Year of Filing[19]	-0.33	-2.93
None of the Settlement Was Cash[32]	-0.47	-1.38
Part of the Settlement Was Cash[33]	0.20	2.13
Number of Observations	331	
Adjusted R-Squared	0.53	

Federal Filings Decline When Overall Stock Market Performance Improves

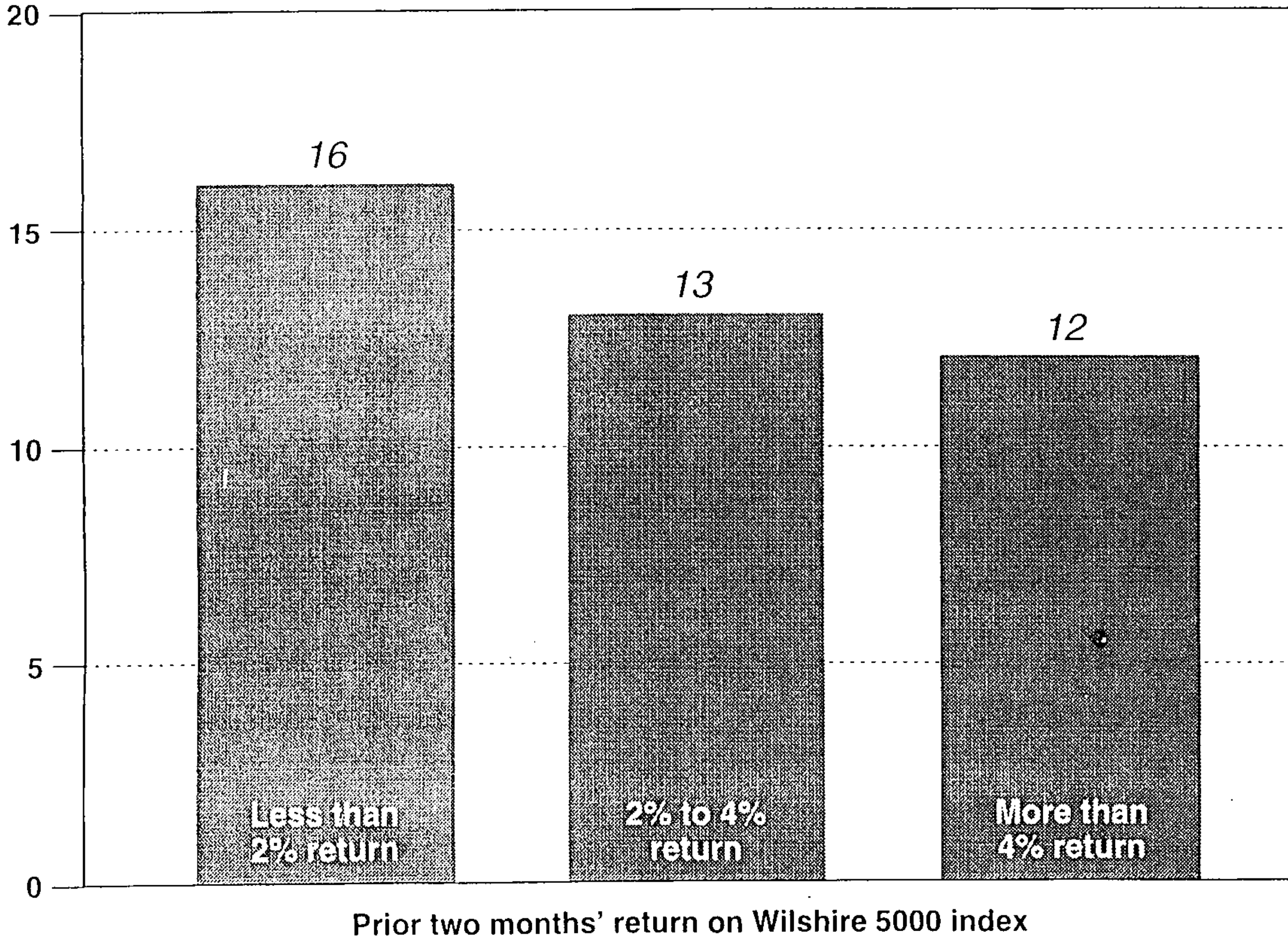
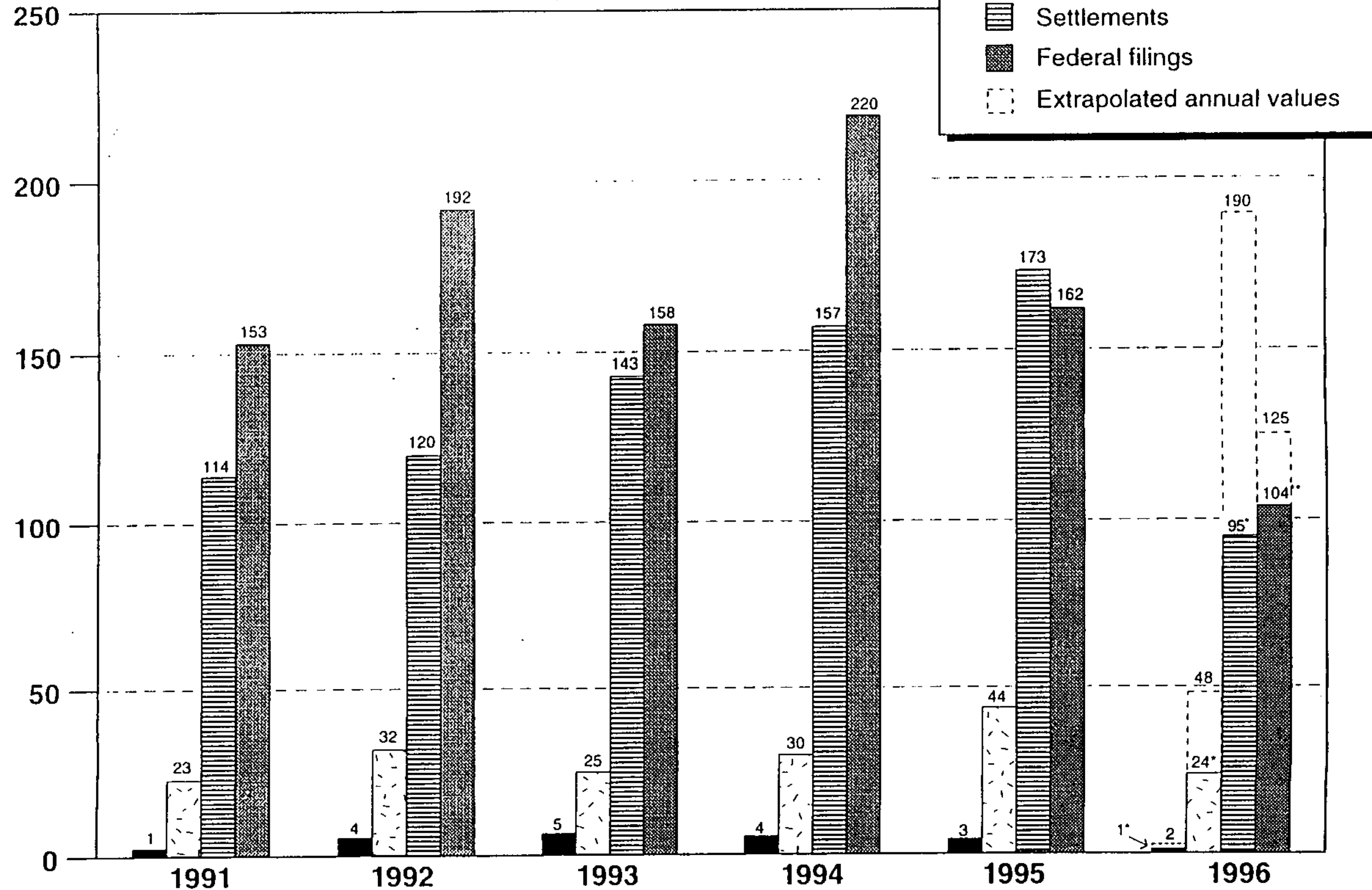


Figure 1

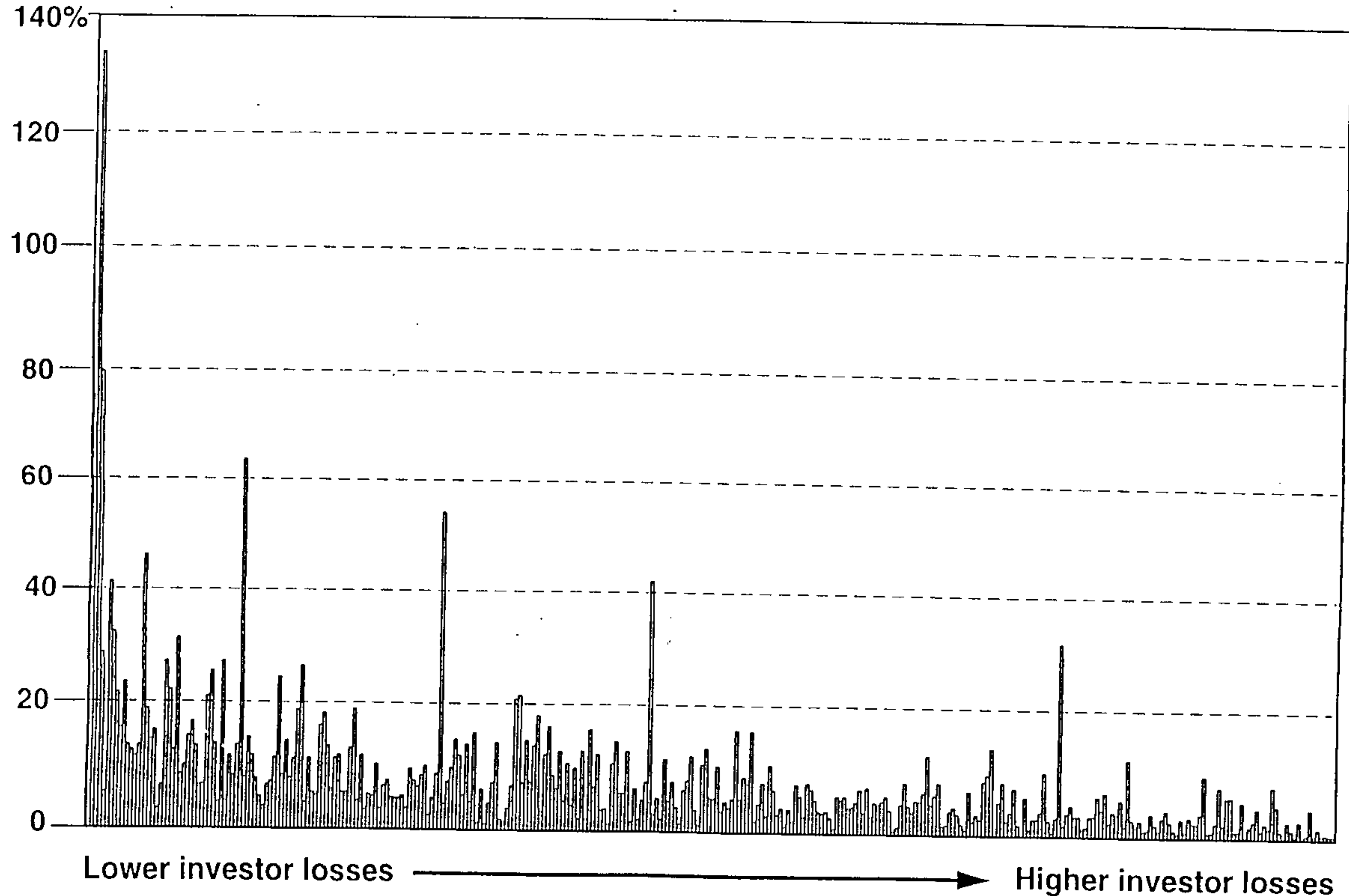
Federal Filings and Resolutions of Securities Class Action Suits



*Data from January to June 1996 **Data from January to October 1996

Figure 2

Ratio of Settlement Value to Investor Losses Decreases as Investor Losses Increase



Note: Cases presented in ascending order based on size of investor losses.

Figure 3

Expected Settlements Increase with Investor Losses and With an Advisor Codefendant

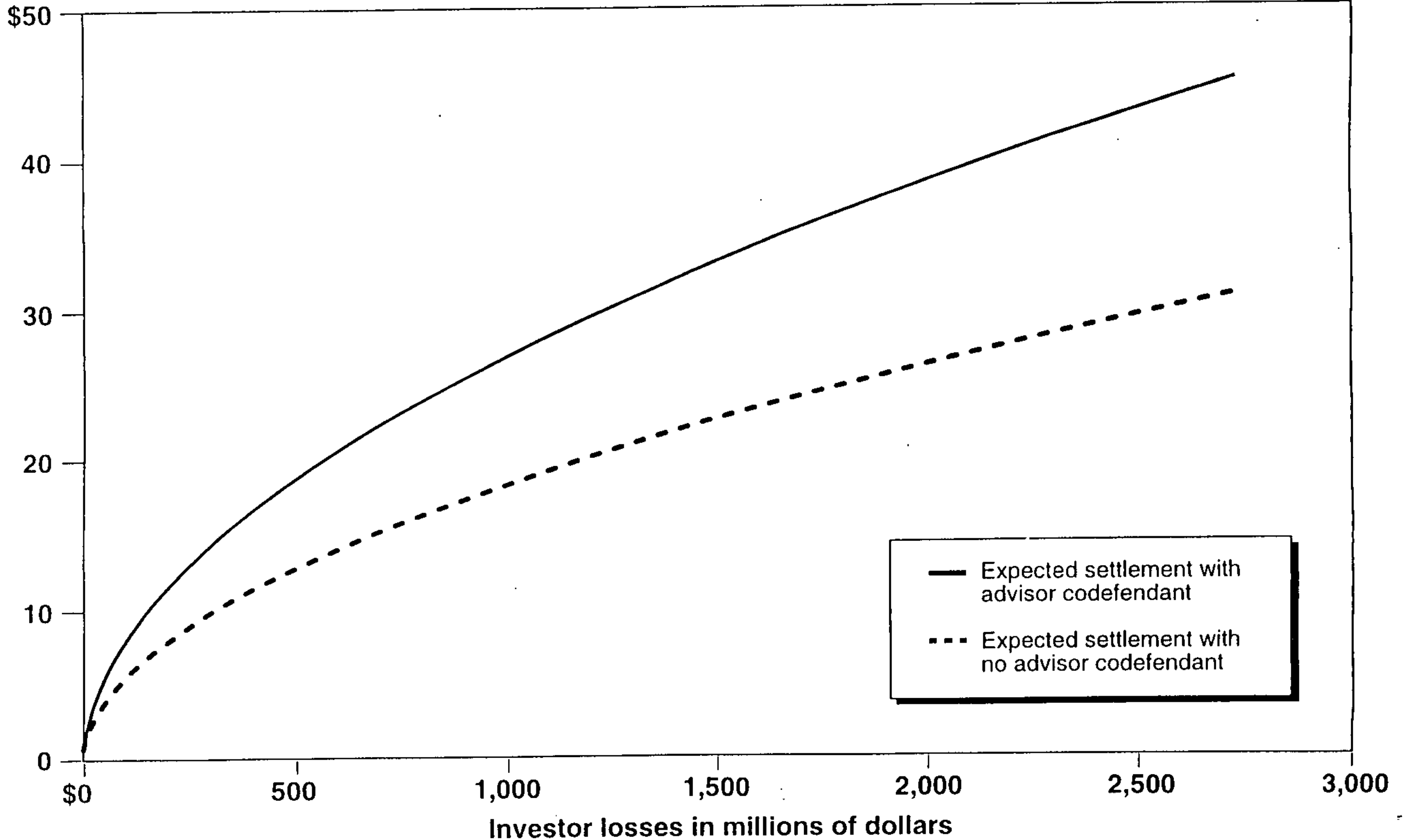
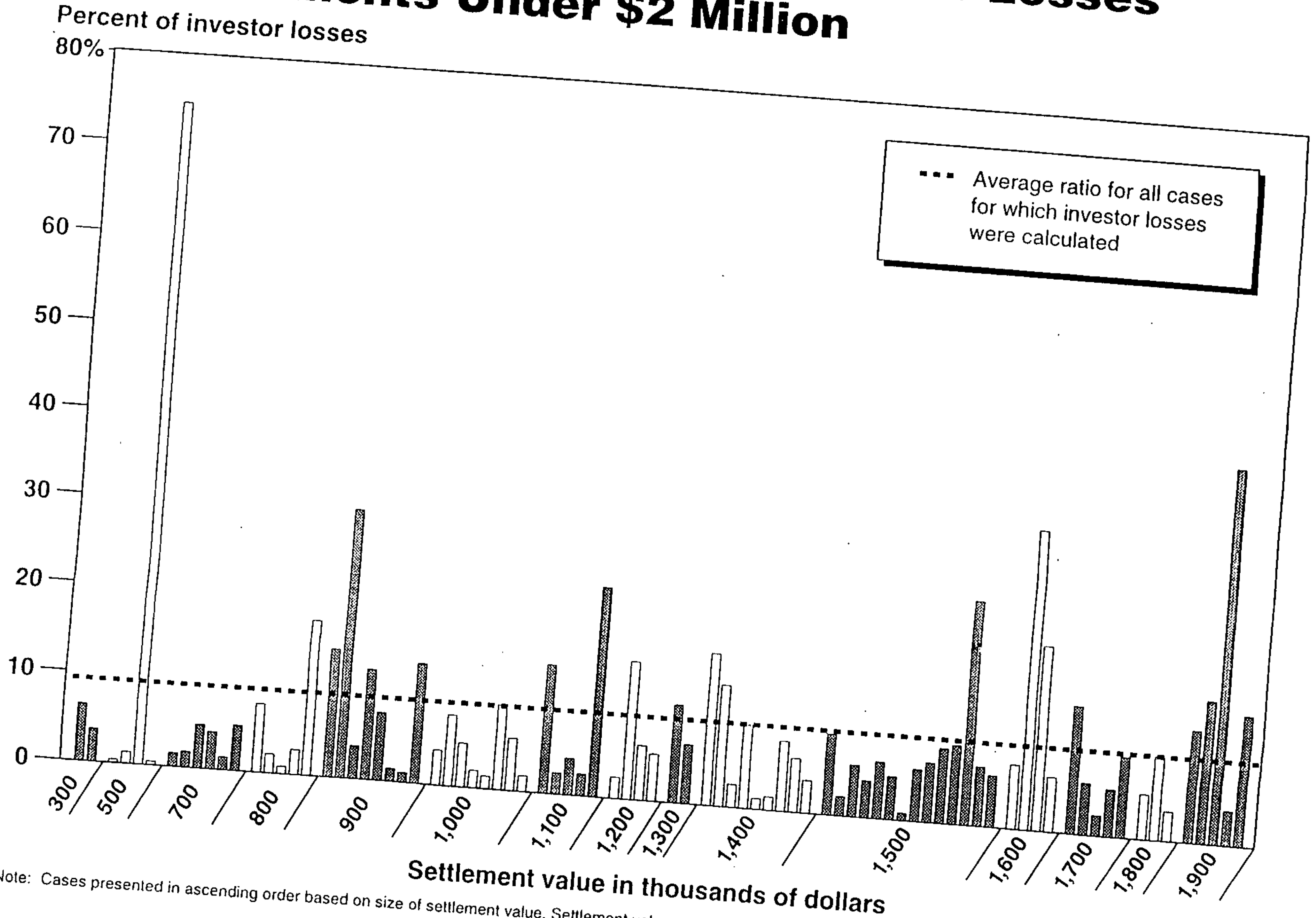


Figure 4



Note: Cases presented in ascending order based on size of settlement value. Settlement values are rounded to the nearest hundred thousand dollars.

Figure 5

Settlements Reached Within One Year are a Smaller Percent of Investor Losses

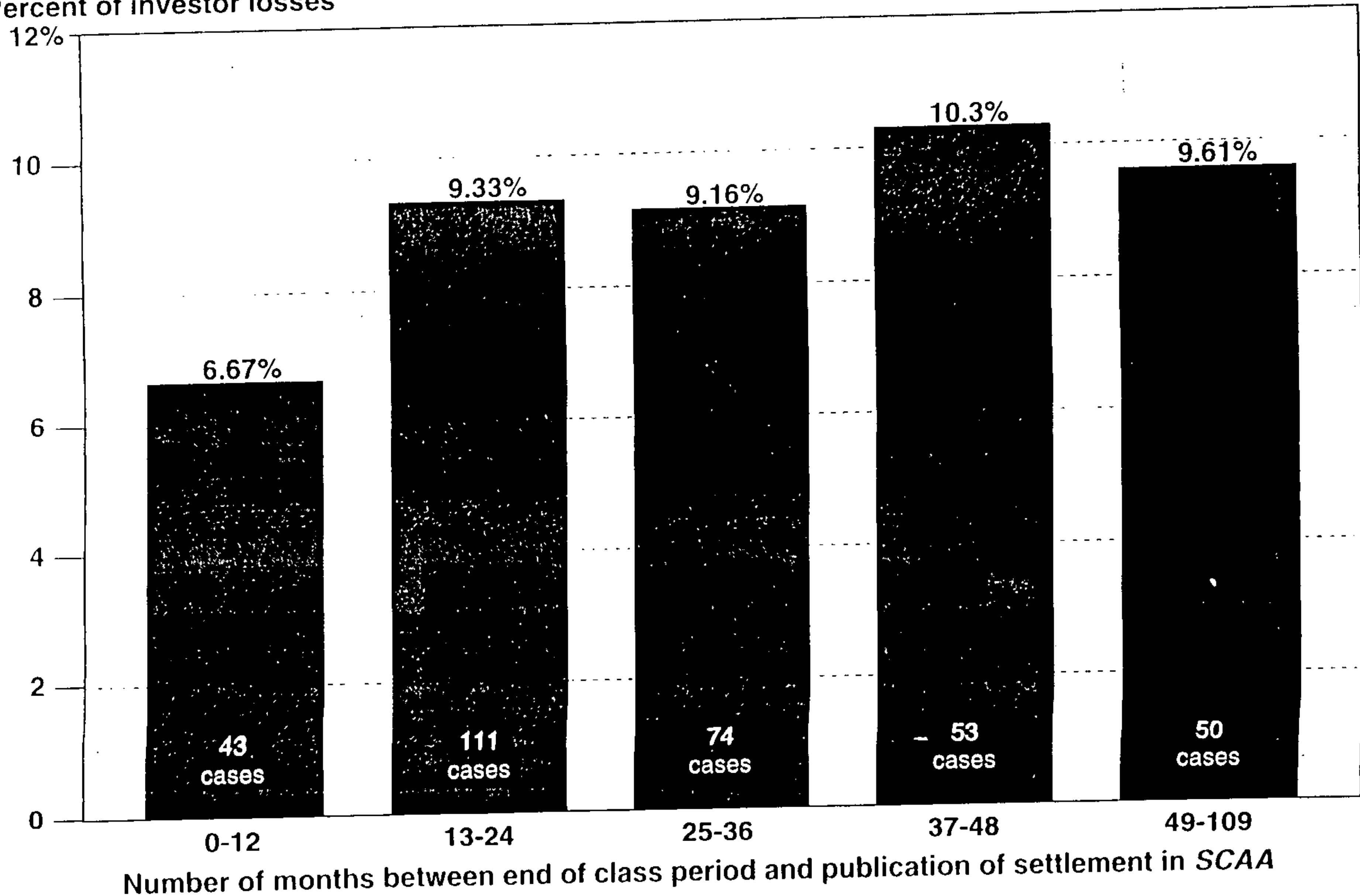


Figure 6

Tables
Notes and Sources

Disposition data were obtained from *Securities Class Action Alert (SCAA)*. *SCAA* is a monthly newsletter published by Investors Research Bureau, Inc., Cresskill, New Jersey. A disposition was included if its resolution was published in the *SCAA* between January 1991 and June 1996. Settlements were included only if all the defendants settled or if some of the defendants settled and the charges were dismissed against the other defendants. All data used to compute investor losses were obtained from either FactSet Data Systems, Inc. or Interactive Data Corporation. All averages are calculated as arithmetic means unless otherwise stated. Filing data were obtained from the monthly issues of *SCAA* along with additional data compiled by *SCAA*. A filing was included if it was filed between January 1991 and October 1996. Numbers in columns may not always sum to totals presented due to rounding.

1) Federal court filing data consist of all cases compiled by *SCAA*. This data is supplemented with filings reported in *Securities Class Action Clearinghouse* and in the news database of *Bloomberg, L.P.* (for October 1996 only).

2) The sample considered in this analysis consists of cases filed in federal court for which *SCAA* or *Bloomberg, L.P.* provide a defined class period. Note that the filing date used to calculate this lag may be taken from a complaint other than the initial complaint if *SCAA* received only the latter complaint. Since this inconsistency occurs throughout the sample period, it should not bias our conclusions regarding the changes in time to filing

3) Monthly value of the Wilshire 5000 index obtained from FactSet Data Systems, Inc. For a two-tailed test of statistical significance with 67 degrees of freedom, an absolute value above 2.00 is significant at the 95 percent level of confidence and an absolute value above 2.65 is significant at the 99 percent level of confidence. For a one-tailed test, an absolute value above 1.67 is significant at the 95 percent level of confidence and an absolute value above 2.38 is significant at the 99 percent level of confidence.

4) State court filing data consist of all cases compiled by *SCAA*, *Securities Class Action Clearinghouse* and *Bloomberg, L.P.* (for September and October 1996). This data is supplemented with state court filings initially reported by *SCAA* which have subsequently been superseded, by *SCAA* convention, with similar federal filings.

5) Includes resolution of cases which were identified in the *Dow Jones News Wire*, *The New York Times*, *The Wall Street Journal* and *Securities Regulation & Law Report* between January 1, 1991 and June 30, 1996. Does not include partial or reversed dismissals or judgments.

6) Includes voluntary dismissals by plaintiffs.

7) Includes judgments by default.

8) Cases were selected for this study if they met the following criteria:
   1. The suit was filed in federal court.
   2. The named defendant(s) include a corporation or partnership.
   3. The plaintiff alleged fraud involving at least the price of common stock.
   4. The case included allegations of material misrepresentations and omissions regarding the true health and potential of the defendant company.
   5. The settlement was either in cash or a cash equivalent could be determined.

9) Includes cases for which attorney fees could be distinguished from attorney expenses.

10) Attorney fees are frequently indicated as "up to" or "not to exceed" a particular percentage of the settlement value. For these cases, the maximum attorney fee awardable was used for calculations.

11) Data regarding plaintiffs' damage estimates from NERA case files were used for only those cases which met the criteria in note (8) above and had allegations involving only common stock.

12) Investor losses were calculated for those cases which met the criteria in note (4) above and the following:
   1. The case had a defined class period over which purchases of common stock only were alleged to have been damaged.
   2. The class period began on or after December 31, 1984.
   3. Data were available on daily trading volume, daily closing price, and shares outstanding for the defendant company over the relevant time period from either FactSet Data Systems, Inc. or Interactive Data Corporation.

Investor losses were computed in a manner similar to the approach sometimes used by plaintiffs in computing damages. Briefly stated, this approach attaches a damage (or investor loss) to the purchases made on each day during the class period. The investor losses calculation compares the actual stock price on each day during the class period with a hypothetical price which moves exactly like the S&P 500 index and arrives at a value on the last day of the class period equal to the defendant's average stock price for the five subsequent days. For shares purchased during the class period and held through to the end, the loss per share equals the difference between the actual and hypothetical purchase prices. For shares purchased and sold during the class period, the loss per share equals the difference between the actual and hypothetical purchase price less the difference between the actual and hypothetical sale price. This loss is limited to the actual loss (actual purchase price less actual sale price). The number of shares bought on any given day during the class period and either sold on any given day during the class period or held to the end of the class period is estimated using the proportional decay model developed by John Torkelsen, an expert witness often used by plaintiffs' attorneys. This model was not adjusted for institutional holdings (SEC Form 13Fs),

insider holdings or transactions (SEC Forms 3 and 4), short interest, or shareholders with 5 percent ownership of the outstanding stock (SEC Forms 13D and 13G). An adjustment for dealer trading of 50 percent is applied to the volume of shares traded over the counter.

13) Includes cases for which information regarding attorney fees and expenses was available.

14) Defendants' previous motion for summary judgment granted in part.

15) Default judgment was against Meyer Blinder and John Cox. The case against Blinder, Robinson & Company was settled at a later date.

16) Dismissal for Merrill Lynch & Company and Bear Stearns.

17) For a two-tailed test of statistical significance with 43 degrees of freedom, an absolute value above 2.02 is significant at the 95 percent level of confidence and an absolute value above 2.70 is significant at the 99 percent level of confidence. For a one-tailed test, an absolute value above 1.68 is significant at the 95 percent level of confidence and an absolute value above 2.42 is significant at the 99 percent level of confidence.

    For a two-tailed test of statistical significance with 325 degrees of freedom, an absolute value above 1.97 is significant at the 95 percent level of confidence and an absolute value above 2.59 is significant at the 99 percent level of confidence. For a one-tailed test, an absolute value above 1.65 is significant at the 95 percent level of confidence and an absolute value above 2.34 is significant at the 99 percent level of confidence.

    For a two-tailed test of statistical significance with 116 degrees of freedom, an absolute value above 1.98 is significant at the 95 percent level of confidence and an absolute value above 2.62 is significant at the 99 percent level of confidence. For a one-tailed test, an absolute value above 1.66 is significant at the 95 percent level of confidence and an absolute value above 2.36 is significant at the 99 percent level of confidence.

18) Advisor defendants are law firms, accounting firms or underwriters.

19) This variable equals one if the number of years from the end of the class period to the date of settlement is less than one and otherwise equals zero.

20) Potential Section 11 exposure exists if there was a security offering during the class period.

21) This variable equals one if there was a security offering during the class period and otherwise equals zero.

22) This variable equals one if a regulatory or enforcement agency was investigating the defendant company and otherwise equals zero.

23) This variable equals one if a defendant company was ordered or consented to refrain from particular actions by a regulatory or enforcement agency and otherwise equals zero.

24) This variable equals one if a defendant admitted to or was found in violation of a regulatory or enforcement agency's regulations or was ordered to pay restitution and otherwise equals zero.

25) This variable equals one if an underwriter was named as a defendant and otherwise equals zero.

26) This variable equals one if an accounting firm was named as a defendant and otherwise equals zero.

27) This variable equals one if a law firm was named as a defendant and otherwise equals zero.

28) This variable equals one if the defendant company was a bank and otherwise equals zero.

29) This variable equals one if the defendant company was a high-technology firm and otherwise equals zero.

30) This variable equals one if the case was filed in the particular circuit and otherwise equals zero.

31) This variable equals one if the defendant company was a non-bank financial firm and otherwise equals zero.

32) This variable equals one if the settlement of the case included no cash and otherwise equals zero.

33) This variable equals one if the settlement of the case included a non-cash distribution and otherwise equals zero.

n/e/r/a

NATIONAL ECONOMIC
RESEARCH ASSOCIATES

Consulting Economists

•

White Plains, NY
Washington, DC
Los Angeles, CA
Cambridge, MA
Philadelphia, PA
San Francisco, CA
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Congress of the United States
House of Representatives
Washington, DC 20515

March 14, 1997

The Honorable William J. Clinton
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We are writing on an issue that is of vital concern to our constituents in the high tech and emerging company sectors, and that significantly affects America's economic growth.

In 1995, Congress passed the Private Securities Litigation Reform Act with bipartisan support to end abuses in federal securities class actions. Now there is evidence that the reforms we enacted are being circumvented. Although plaintiffs traditionally have brought securities class actions in federal court under federal law, claims now are being filed at record rates in state courts. In effect, the standards in the federal securities laws, as amended by the Reform Act, are being bypassed.

Last year, you recognized the potential dangers of bypassing this new law and the national character of our securities litigation system when you opposed California Proposition 211. Observing that Proposition 211 had "national implications", you noted that it would "invite the filing of lawsuits in California that otherwise could not be brought under federal law." Leon Panetta reiterated that "[the President] does not believe states should do this on a hit-and-miss basis...[W]hen it comes to securities law, Congress should set the rules." We, too, believe that the remedies available to purchasers and sellers of nationally-traded securities should not vary depending upon the state in which the purchaser or seller resides, but should be uniform for all similarly-situated persons.

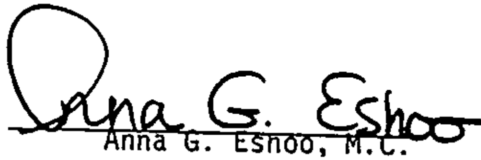
To uphold this principle, we would like to work with you to enact legislation establishing uniform standards for private securities class action litigation, based upon the reforms embodied within the PSLRA, to cover nationally marketed securities. This would ensure that the reforms passed in 1995 are not subverted. We emphasize that we do not seek to affect the power of state regulatory agencies to bring enforcement actions, or to limit non-class action lawsuits brought under state law. Instead, we want only to ensure that private

securities class actions are governed by fair and consistent rules that will ensure stability in the legal environment.

This legislation is essential to the vitality of the new venture and high-growth sectors of our economy, which are responsible for a substantial portion of the growth in the country's gross domestic product in recent years.

On behalf of our constituents, and in the interest of promoting economic growth and job creation, we urge you to support uniform standards legislation and work with us to enact this bill this year.

Sincerely,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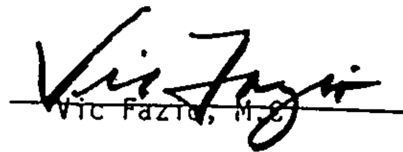
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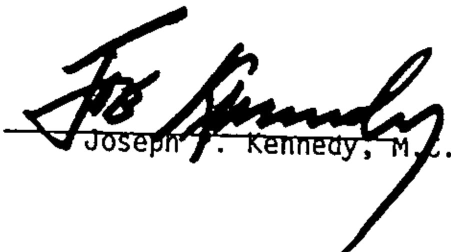
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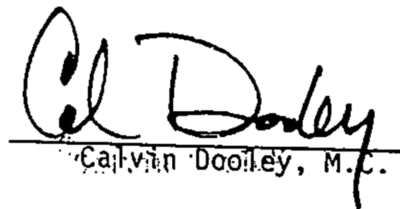
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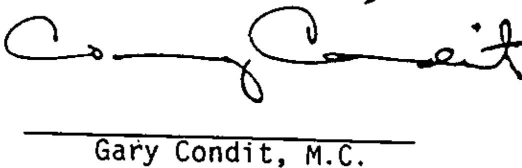
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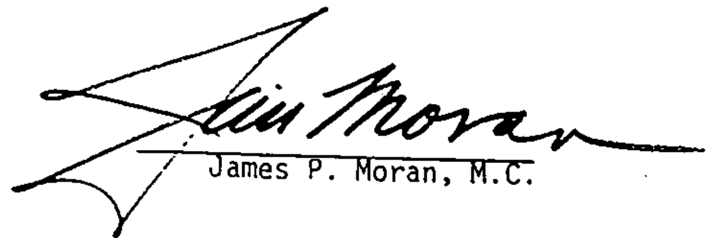
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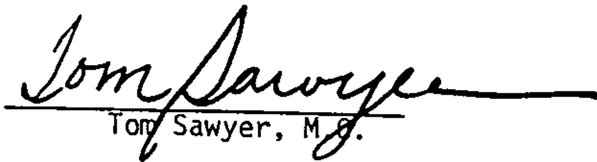
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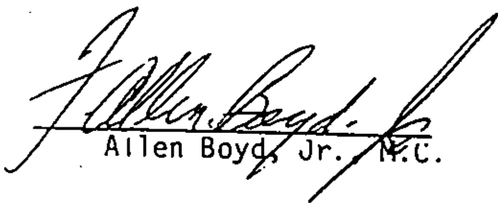
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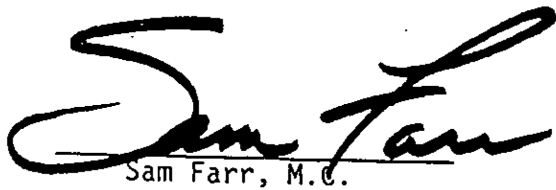
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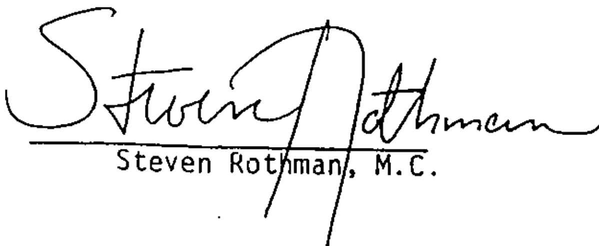
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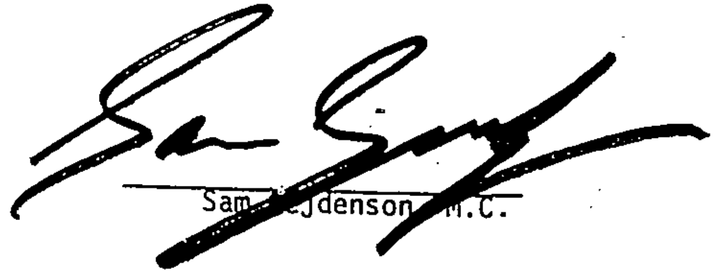
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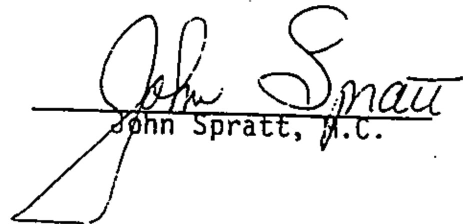
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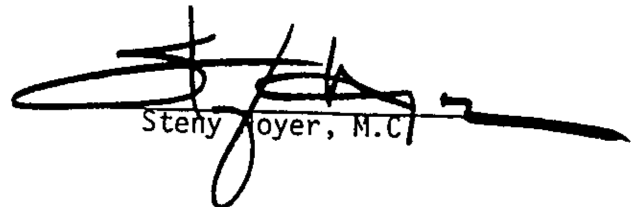
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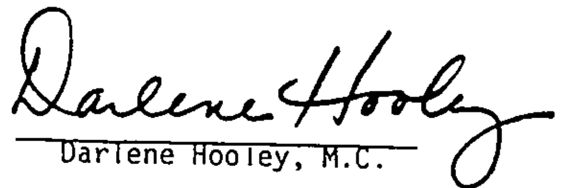
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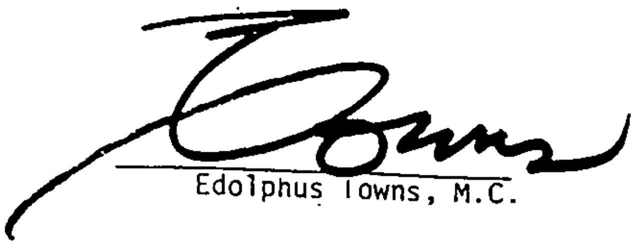
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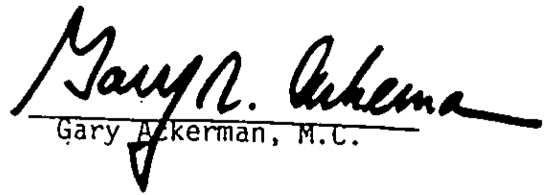
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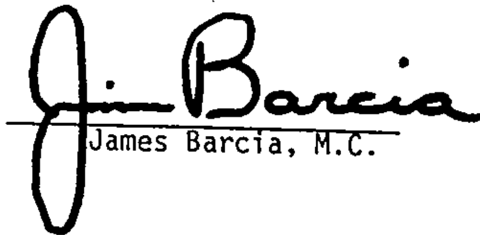
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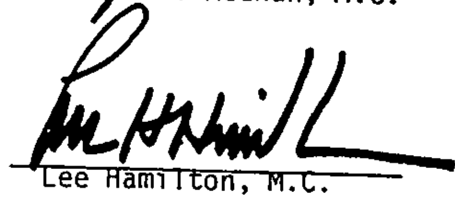
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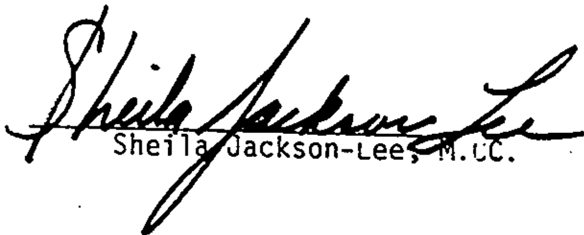
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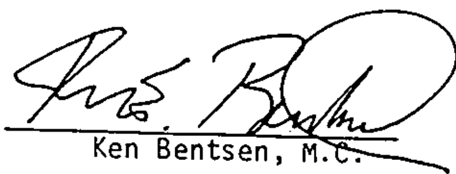
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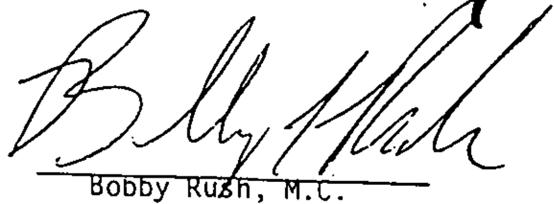
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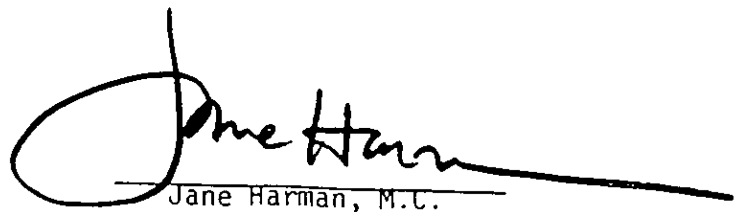
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Louise M. Slaughter, M.C.

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Tom Allen, M.C.

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Robert Clement, M.C.

Sanford Bishop, Jr., M.C.

Carolyn B. Maloney, M.C.

Peter J. Visclosky, M.C.

William (Bill) Luther, M.C.

Bob Etheridge, M.C.

Robert (Bud) Cramer, M.C.

U.S. Coalition Letter Signatories

March 14, 1997

Tom Allen (ME)
Gary Ackerman (NY)
Robert Andrews (NJ)
Scotty Baesler (KY)
Jim Barcia (MI)
Ken Bentsen (TX)
Sanford Bishop (GA)
Allen Boyd (FL)
Sherrod Brown (OH)
Bob Clement (TN)
Gary Condit (CA)
Robert Cramer (AL)
Diana DeGette (CO)
Rosa DeLauro (CT)
Peter Deutsch (FL)
Calvin Dooley (CA)
Mike Doyle (PA)
Chet Edwards (TX)
Anna Eshoo (CA)
Bob Etheridge (NC)
Sam Farr (CA)
Vic Fazio (CA)
Barney Frank (MA)
Martin Frost (TX)
Elizabeth Furse (OR)
Sam Gejdenson (CT)
Virgil Goode (VA)
Lee Hamilton (IN)
Jane Harman (CA)
Tim Holden (PA)
Darlene Hooley (OR)

Steny Hoyer (MD)
Sheila Jackson-Lee (TX)
Joe Kennedy (MA)
Patrick Kennedy (RI)
Barbara Kennelly (CT)
Ron Kind (WI)
Gerald Kleczka (WI)
William Luther (MN)
Zoe Lofgren (CA)
Carolyn Maloney (NY)
Paul McHale (PA)
Marty Meehan (MA)
Jim Moran (VA)
Solomon Ortiz (TX)
Nancy Pelosi (CA)
Collin Peterson (MN)
Owen Pickett (VA)
Tim Roemer (IN)
Steve Rothman (NJ)
Bobby Rush (IL)
Tom Sawyer (OH)
Louise Slaughter (NY)
John Spratt (SC)
Deborah Stabenow (MI)
Charlie Stenholm (TX)
John S. Tanner (TN)
Ellen Tauscher (CA)
Ed Towns (NY)
Bruce Vento (MN)
Pete Visclosky (IN)

Total: 61

Securities Litigation Reform

4/8 Yr-end review securities mtg.

Hard to track it. ct cases - no central reporting - no good data

Always been cases on state side.

On preemption

Key is whether states can entertain nation-wide class action. Shouldn't be allowed to do this.

Leads to targeted preemption

But SEC hard-pressed to call for any further preemption breach of faith. Getting that initial preemption was viewed as major thing by state - we said "no further".

Don't have good reason yet to say something is nec.

People not doing safe harbor - bec don't know what it means

SEC can't give sufficiently specific guidance

Release report in next 10 days.

At least 3 commissioners will sign on.

Follow up reports should be done

PRESERVATION PHOTOCOPY

Securities Litigation Reform

Reform Rings Hollow for Firms Worried About Class-Action Suits

By PAUL BECKETT
Dow Jones Newswires

WASHINGTON – Legislation intended to shield companies from the high cost of class-action lawsuits may have backfired.

Some early signs suggest the law has done little to curtail the number of the suits. And, in some instances, it may have increased the cost for companies to defend against such actions, executives, attorneys and legal scholars say.

The Private Securities Litigation Reform Act, passed over President Clinton's veto in late 1995, is aimed at protecting public companies – and fast-growing high-tech companies in particular – from the costs of defending against "abusive" securities-fraud class-action claims.

Plaintiffs' lawyers contend it has done exactly that.

New Venue

But a recent study by Stanford University law Profs. Joseph Grundfest and Michael Perino found that, while the number of cases filed in federal court had dropped, the decline was offset by a sharp rise in the number of class-action fraud cases brought in state courts, where the federal provisions don't apply. Before the changes, few companies were hit with class-action fraud suits filed only in state courts; last year, there were at least 39, the study found.

The study found that at least 30 companies were sued in both federal and state courts – a tactic that can circumvent some of the federal law's provisions and push defense costs even higher. "It can have the reverse effect. . . . You can be fighting on two fronts," says Marc Gary, a partner at Mayer Brown & Platt in Washington, D.C., who represents defendants in class-action fraud cases.

The study also found that high-tech companies, which tend to have volatile share prices, still made up about a third of all companies sued in federal court.

A 'Safe Harbor'

The transfer of cases to state court, where legal standards for class-action fraud claims are often lower than in federal court, has undermined another of the law's key goals, according to securities regulators.

Working on the theory that the more information investors have the better, Congress sought to encourage companies to make public predictions by introducing a "safe harbor" in the act. It gives companies protection from suits stemming from forecasts as long as the company includes "meaningful cautionary language."

But officials at the Securities and Exchange Commission say many companies remain reluctant to make forward-looking statements, in part because they still fear suits in state courts, where the safe harbor doesn't apply.

"We are finding far fewer cases of companies providing good forward-looking information than we had hoped," says SEC Commissioner Steven Wallman.

Lawmakers Seek Remedy

Officials at the SEC, which is preparing its own report on the law's first year, say it is still too early to draw far-reaching conclusions about its effectiveness. Nonetheless, the law's original backers are now calling for more legislation to stop the law from being so easily circumvented.

"We've been working with Democrats and Republicans on language that, in effect, would finish the job we started a couple of years ago," says a spokesman for Rep. Joseph Kennedy (D., Mass.), one of the chief supporters of the law.

The discussions center on giving companies that have nationally marketed securities the right to switch class-action fraud suits filed against them in state court to federal court, where the law's defendant-friendly terms would apply.

But such an initiative is sure to face fierce opposition. Organizations representing local and state officials have said they strongly oppose proposals that would pre-empt state securities laws. And plaintiffs' attorneys, who opposed the changes when they were passed, continue to argue that the law tips the balance between company and shareholder interests too far in favor of the company.

"This is a field day for the defense," says Melvyn Weiss, a partner with the big plaintiffs class-action-firm Milberg Weiss Bershad Hynes & Lerach in New York. Adds Jim Schweitzer, a partner with the Cuneo Law Group in Washington, D.C.: "If you pre-empt state remedies, it could leave investors with no way to get their money back if they're victims of fraud."

THE WALL STREET JOURNAL
FRIDAY, APRIL 4, 1997

AMR Unit's Pilots Likely to Approve Tentative Contract

By Scott McCartney
Staff Reporter of The Wall Street Journal

ARLINGTON HEIGHTS, Ill. – After more than two years of bargaining, months of federally mediated talks, a brief strike and intervention by President Clinton, the board of American Airlines' pilots union will finally vote today on a tentative settlement to the contract standoff. Both supporters and opponents said the deal is likely to be approved.

The 18-member board of the Allied Pilots Association, which represents American's 9,300 pilots, considered the proposal yesterday but postponed a vote until today. Final questions on the contract required conference calls with management at American, a unit of AMR Corp. of Fort Worth, Texas, delaying the oft-delayed process yet again.

"I think the board is trying to be as responsible as possible," APA President James Sovich said, promising a vote will be taken today.

Mr. Sovich, along with other union leaders, has said he expects the proposal to be approved and sent to members for ratification. But if the board rejects the settlement, a 30-day countdown to a second strike would automatically begin, unless Congress intervenes.

Opponents had pledged to try and delay the proceedings in hopes of winning over enough voters to reject the deal, which negotiators had hammered out in talks on remote Orcas Island, Wash., last month. "This buys us some time overnight," said one union director opposed to the contract proposal. Still, board members said they counted only about six remaining opponents to the deal out of the 18 APA directors.

The proposed settlement gives pilots 9% in raises over its five-year duration, plus options to purchase 5.75 million shares of AMR common stock at $10 below market price. American, the nation's second-largest airline, will receive some productivity improvements under the deal, and will retain the right to fly small jets on regional routes using American Eagle commuter pilots, who are lower-paid and represented by a different union.

That issue had become the sole sticking point and the target of continued opposition from groups of pilots at several base locations, including the large Miami base. APA had insisted on winning those jobs because it fears those small jets may ultimately replace larger American jets on some routes.

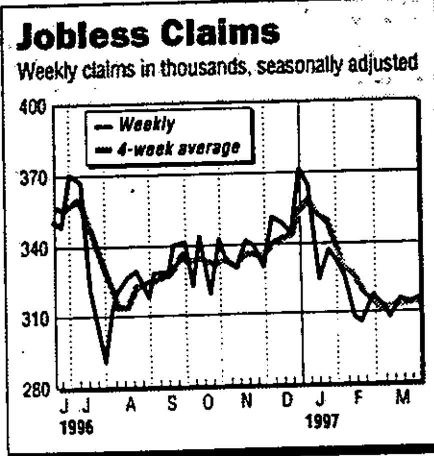
In January, APA members, who earn an average $120,000 a year, rejected an earlier tentative agreement calling for raises of 5% over four years and limited regional-jet flying by commuter pilots, who earn an average $35,000 annually at American Eagle. In addition to added pay increases and sweetened stock options, the new settlement agreement includes a compromise giving APA members the ability to take regional-jet jobs at commuter-airline wage rates in the event of layoffs at the major airline.

Initial Jobless Claims Inch Higher but Stay Near Lows of Late '80s

By a Wall Street Journal Staff Reporter

WASHINGTON – Initial claims for jobless benefits edged up last week but remain near the lowest levels seen since the late 1980s.

The number of first-time claims for state unemployment insurance rose by 1,000 in the week ended last Saturday to a seasonally adjusted 314,000, the Labor Department said. The prior week's number was revised upward to 313,000 from 310,000.



The number of initial jobless claims has stayed below 320,000 for eight consecutive weeks, the longest streak since 1989, a sign of continuing labor-market tightness.

The four-week moving average for initial claims, considered a better measure of labor-market conditions, rose 500 last week to 312,500. That number also is near long-term lows.

Today, the Labor Department will release its employment report for March. Most economists expect the unemployment rate to hold steady at February's 5.3% or to drop further. Most analysts expect the number of jobs created to be significant, but below last month's 339,000.

WSJ.com **Journal Link:** See the full text of the Labor Department's report on jobless claims at The Wall Street Journal Interactive Edition at **http://wsj.com**

CORRECTIONS & AMPLIFICATIONS

RANA TALWAR, former head of Ci[illegible] corp's retail banking business in North America and Europe, left the bank April 1 to join **Standard Chartered Bank PLC** in London, where he will be group executive director responsible for corporate and consumer banking in Africa, the Middle East and South Asia. The appointment is effective April 22. Because of incorrect information supplied by Citicorp, an article Monday said that Mr. Talwar was joining Standard Chartered in late April as head of corporate banking in India, Pakistan, Africa and the Middle East, and would be based in India.

* * *

INTERNATIONAL NETWORK SERVICES Inc. is a computer network-services company. An article Wednesday incorrectly identified the company as a video-network service provider.

* * *

LEGISLATORS in the Wyoming House of Representatives now have term limits of 12 years. Because of an error in information supplied by U.S. Term Limits, a chart accompanying an article Wednesday incorrectly listed the limit as six years.

THE WALL STREET JOURNAL
FRIDAY, APRIL 4, 1997

THE WHITE HOUSE

WASHINGTON

E - Suggestions attached. Does Senator Dodd know this is coming? Is he okay with that and the alternative formulations? JQ

October 16, 1996

MEMORANDUM FOR JACK QUINN
BRUCE LINDSEY
KATHY WALLMAN

TL

FROM: ELENA KAGAN EK

SUBJECT: DRAFT LETTER ON PREEMPTING STATE SECURITIES LAW

Attached is a draft letter to Senator Dodd on legislation to preempt state securities law. You'll recall that John Doerr and others involved in fighting Prop 211 urged us to make such a statement in lieu of pushing legislative language to go on the CR.

The fourth paragraph of the letter contains three bracketed sentences; these are meant to be alternatives, from which we should pick one:

- Sentence (1) is a slight simplification of the NEC's (or at least Ellen Seidman's) current position: preemption is appropriate when a company that must register under the 1934 Securities Act (i.e., a company with more than 500 shareholders and $10 million in assets) issues a security that is traded on a registered national securities exchange (or an automated quotation system of a registered securities association) and the suit relates to the purchase or sale of that security. An even broader formulation, also suggested by the NEC, would encompass securities that, though not traded on a national exchange, are subject to regulation (e.g., registration requirements) under the 1933 Securities Act -- that is, securities offered interstate to any and all investors in an amount exceeding $5 million.

- Sentence (2) is a slight simplification of the SEC's (or at least its counsel's and chief of staff's) current position. The SEC is very uncomfortable with the NEC's proposal -- or with any other proposal that would significantly revise the current balance between state and federal securities law. The SEC is looking for a way to go after what it sees as the worst aspect of Proposition 211, while leaving other state securities law in place.

  To be more specific: What seems most dangerous to the SEC about Prop 211 is that it effectively would replace federal securities law by allowing nationwide securities class actions to go forward in California courts under very pro-plaintiff California law. (Who would ever bring such an action in federal court again?) The SEC believes that the

way to prevent this from happening -- while at the same time retaining the current role of state securities law -- is to pass legislation preempting any state securities action that is not based on privity. (You'll recall from law school days that a suit is based on privity when the plaintiff has bought something from or sold something to the defendant.) According to the SEC, a privity requirement effectively would foreclose state courts from hosting nationwide class actions. And since more than 40 states now have privity requirements, a preemption proposal of this kind would leave intact most current state securities law.

Of course, this proposal would not satisfy Doerr and others in the Silicon Valley community. For one thing, it would leave much of Prop 211 still standing. More broadly, it would leave securities a law a joint federal-state system, rather than the almost exclusively federal realm that Doerr and others (including the President and Leon in some of their most recent public comments) seem to envision.

- Sentence (3) is the coward's -- or perhaps the wise man's -- way out. This sentence says nothing about the specifics of a preemption proposal, leaving us to deal with those issues as they come up (but also perhaps making it harder for us to object to proposals that we believe to be too extreme).

What do you all think?

I still like the way this reads. — B

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 1058, the "Private Securities Litigation Reform Act of 1995." This legislation is designed to reform portions of the Federal securities laws to end frivolous lawsuits and to ensure that investors receive the best possible information by reducing the litigation risk to companies that make forward-looking statements.

I support those goals. Indeed, I made clear my willingness to support the bill passed by the Senate with appropriate "safe harbor" language, even though it did not include certain provisions that I favor -- such as enhanced provisions with respect to joint and several liability, aider and abettor liability, and statute of limitations.

I am not, however, willing to sign legislation that will have the effect of closing the courthouse door on investors who have legitimate claims. Those who are the victims of fraud should have recourse in our courts. Unfortunately, changes made in this bill during conference could well prevent that.

This country is blessed by strong and vibrant markets and I believe that they function best when corporations can raise capital by providing investors with their best good-faith assessment of future prospects, without fear of costly, unwarranted litigation. But I also know that our markets are as strong and effective as they are because they operate -- and are seen to operate -- with integrity. I believe that this bill, as modified in conference, could erode this crucial basis of our markets' strength.

Specifically, I object to the following elements of this bill. First, I believe that the pleading requirements of the Conference Report with regard to a defendant's state of mind impose an unacceptable procedural hurdle to meritorious claims being heard in Federal courts. I am prepared to support the

high pleading standard of the U.S. Court of Appeals for the Second Circuit -- the highest pleading standard of any Federal circuit court. But the conferees make crystal clear in the Statement of Managers their intent to raise the standard even beyond that level. I am not prepared to accept that.

The conferees deleted an amendment offered by Senator Specter and adopted by the Senate that specifically incorporated Second Circuit case law with respect to pleading a claim of fraud. Then they specifically indicated that they were *not* adopting Second Circuit case law but instead intended to "strengthen" the existing pleading requirements of the Second Circuit. All this shows that the conferees meant to erect a higher barrier to bringing suit than any now existing -- one so high that even the most aggrieved investors with the most painful losses may get tossed out of court before they have a chance to prove their case.

Second, while I support the language of the Conference Report providing a "safe harbor" for companies that include meaningful cautionary statements in their projections of earnings, the Statement of Managers -- which will be used by courts as a guide to the intent of the Congress with regard to the meaning of the bill -- attempts to weaken the cautionary language that the bill itself requires. Once again, the end result may be that investors find their legitimate claims unfairly dismissed.

Third, the Conference Report's Rule 11 provision lacks balance, treating plaintiffs more harshly than defendants in a manner that comes too close to the "loser pays" standard I oppose.

I want to sign a good bill and I am prepared to do exactly that if the Congress will make the following changes to this legislation: first, adopt the Second Circuit pleading standards and reinsert the Specter amendment into the bill. I will support a bill that submits all plaintiffs to the tough pleading

standards of the Second Circuit, but I am not prepared to go beyond that. Second, remove the language in the Statement of Managers that waters down the nature of the cautionary language that must be included to make the safe harbor safe. Third, restore the Rule 11 language to that of the Senate bill.

While it is true that innocent companies are hurt by frivolous lawsuits and that valuable information may be withheld from investors when companies fear the risk of such suits, it is also true that there are innocent investors who are defrauded and who are able to recover their losses only because they can go to court. It is appropriate to change the law to ensure that companies can make reasonable statements and future projections without getting sued every time earnings turn out to be lower than expected or stock prices drop. But it is not appropriate to erect procedural barriers that will keep wrongly injured persons from having their day in court.

I ask the Congress to send me a bill promptly that will put an end to litigation abuses while still protecting the legitimate rights of ordinary investors. I will sign such a bill as soon as it reaches my desk.

William J. Clinton

THE WHITE HOUSE,

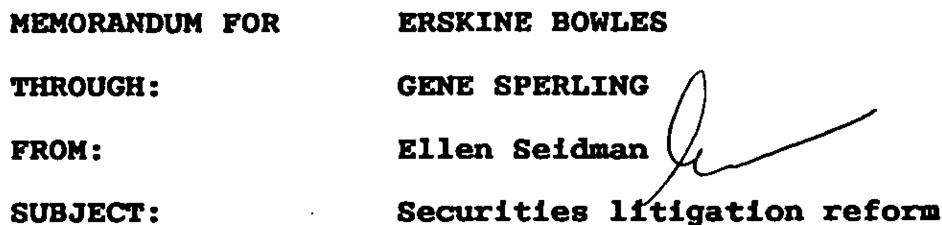
December 19, 1995.

Elena Kagan
278-U

THE WHITE HOUSE

WASHINGTON

January 16, 1997



MEMORANDUM FOR ERSKINE BOWLES

THROUGH: GENE SPERLING

FROM: Ellen Seidman

SUBJECT: Securities litigation reform

Background

At the end of 1995, President Clinton vetoed a securities litigation reform bill that, among other things, limited discovery, changed pleading standards and created a "safe harbor" for forward-looking information. Congress overrode the veto. Concerned that plaintiffs' attorneys would bring actions in state courts that had been made more difficult or impossible in federal court, during the California Republican primary California business interests attempted to pass referenda that would have instituted changes such as "loser pays." These failed.

The plaintiffs' bar, supported by labor and some parts of the pension community, as well as the California Democratic Party, then proposed Proposition 211, which was on the November ballot. Business interests vigorously opposed Prop 211. The referendum would have established procedural rules for securities fraud suits in California courts that not only were far more favorable to plaintiffs than the federal rules, but that also applied to any company with any California shareholders. Business interests asserted this would have effectively overriden the federal statute, making California a haven for frivolous securities fraud suits from all over the country.

On a campaign trip to California, which included a dinner with representatives of the high tech community, the President and Leon Panetta stated (and were quoted in the press) that Prop 211 was a bad idea. They also said it was a mistake for each state to establish its own rules regarding an essentially federal body of law. There are certainly people in the community who believe the President said he would support a preemptive federal statute.

Prop 211 lost 75% to 25%. And as Congress adjourned last year, it passed a securities law reform bill that preempts state registration laws for most corporations and can be read, aggressively, as preempting state fraud actions based on those laws.

Current state of play

In February, the SEC will deliver to the President a report he requested outlining the impact of the securities litigation reform law. Their preliminary conclusion appears to be that, while it is very early in the process, the act does not seem to have had much impact either in reducing litigation or in increasing information available under the "safe harbor." It is far too early to know the impact on potential litigation of the 1996 statute.

Passing preemptive federal statutes -- particularly laws that interfere with the procedures and operations of state courts -- is extremely difficult. Senator Dodd made this point last fall in wondering why we would favor preemption, although he thought there might be a case for such a statute if Prop 211 passed. We understand that Congressman Oxley (R-Ohio), who business interests expected to sponsor a preemptive statute, has declined on the grounds that it's unneeded, too difficult, and not the kind of thing conservative Republicans like to do. Some of the California Representatives on both sides of the aisle, as well as Congressman Joe Kennedy, are said to be working on a preemptive statute, but it is unclear how far they have gotten.

We have been silent on the issue since the election.

Recommendation

At a meeting attended by John Podesta, Bruce Lindsey, Kathy Wallman, Elena Kagan, Tim Newell, Paul Carey, Dan Tate and me, we concluded that it will be extremely important to walk the fine line between encouraging the high tech group to believe that the Administration favors preemption -- particularly the kind of broad preemption they have had drafted -- and leading them to conclude that we are going back on what they think the President had agreed to. The attached talking points attempt to guide you through the thicket.

Attachments:
Talking points
Veto message
Letter to Arthur Levitt

Talking Points for Meeting with High Tech Leaders
Securities Litigation Reform (Preemption)

- Last time we (Leon) talked together about this issue, we were all concerned that Prop 211 would pass, potentially making California a mecca for securities fraud litigation under less rigorous standards than those in federal law.

- Through all our efforts, that crisis was, fortunately, averted.

- We understand that you remain concerned that similar efforts to establish minimal state standards that apply to out-of-state companies might appear in other states, and that fighting these one by one seems inefficient and counterproductive.

- As the President and I (Leon) said, we too are concerned about state by state action altering what is essentially a federal system.

- On the other hand, the securities laws have 60 years of history with concurrent federal and state jurisdiction. Efforts to limit state jurisdiction, particularly access to state courts, need to be undertaken carefully. **They will be successful only if they are directly responsive to a proven problem, and only if there is broad consensus (which will almost certainly have to include the SEC) to take the action.** [Last year's preemption of state securities registration laws in most cases is an example of a long-developing response to a well understood and documented problem.]

- Now that we are not under the imperative that passage of Prop 211 would have created, it is critical that we carefully work through the nature and extent of any state law problem and whether and what type of federal action might be needed.

- We welcome the opportunity to work with you on this. Kathy Wallman, who has been the Deputy White House Counsel and is now the Chief of Staff and Counselor at the National Economic Council, will be leading our team.

TO THE HOUSE OF REPRESENTATIVES:

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I support those goals. Indeed, I made clear my willingness to support the bill passed by the Senate with appropriate "safe harbor" language, even though it did not include certain provisions that I favor -- such as enhanced provisions with respect to joint and several liability, aider and abettor liability, and statute of limitations.

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high pleading standard of the U.S. Court of Appeals for the Second Circuit -- the highest pleading standard of any Federal circuit court. But the conferees make crystal clear in the Statement of Managers their intent to raise the standard even beyond that level. I am not prepared to accept that.

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William J. Clinton

THE WHITE HOUSE,

December 19, 1995.

THE WHITE HOUSE

WASHINGTON

January 5, 1996

The Honorable Arthur Levitt, Jr.
Chair
Securities and Exchange Commission
Washington, D.C. 20549

Dear Mr. Levitt:

The enactment into law of H.R. 1058, the securities litigation reform act, creates both opportunities and potential pitfalls for United States securities markets. While some of the act's provisions are likely to increase the amount of information available to investors, and thus enhance market efficiency, a number of other sections may reduce the ability of investors to seek redress for damages resulting from arguably fraudulent activities.

I believe it is important that the Securities and Exchange Commission, as the government agency directly charged with implementing the securities laws and protecting investors, monitor the implementation and impact of this legislation carefully -- and increase enforcement and rulemaking activities if necessary. The budget plan I submitted to Congress on December 7 authorizes and expands fees assessed upon transactions in the securities and bond markets. Combined with future appropriations, these fees will improve the Commission's ability to enforce securities laws and to protect investors.

I also believe it will be useful for the Commission to advise me and the Congress within a year about the impact of the act on the effectiveness of the securities laws and on investor protection, and on the extent and nature of any litigation under the act. In the event there are indications that portions of the act are having a negative impact on the integrity of our markets, I hope the Commission will recommend amendments.

It is my sincere hope that the new act's benefits will far outweigh any problems. I welcome your assistance in accomplishing this result.

Sincerely,

Bill Clinton

960116

January 16, 1997

MEMORANDUM FOR ERSKINE BOWLES

FROM: Ellen Seidman, NEC

SUBJECT: Securities litigation reform

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Recommendation

THE WHITE HOUSE

WASHINGTON

January 5, 1996

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Washington, D.C. 20549

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The enactment into law of H.R. 1058, the securities litigation reform act, creates both opportunities and potential pitfalls for United States securities markets. While some of the act's provisions are likely to increase the amount of information available to investors, and thus enhance market efficiency, a number of other sections may reduce the ability of investors to seek redress for damages resulting from arguably fraudulent activities.

I believe it is important that the Securities and Exchange Commission, as the government agency directly charged with implementing the securities laws and protecting investors, monitor the implementation and impact of this legislation carefully -- and increase enforcement and rulemaking activities if necessary. The budget plan I submitted to Congress on December 7 authorizes and expands fees assessed upon transactions in the securities and bond markets. Combined with future appropriations, these fees will improve the Commission's ability to enforce securities laws and to protect investors.

I also believe it will be useful for the Commission to advise me and the Congress within a year about the impact of the act on the effectiveness of the securities laws and on investor protection, and on the extent and nature of any litigation under the act. In the event there are indications that portions of the act are having a negative impact on the integrity of our markets, I hope the Commission will recommend amendments.

It is my sincere hope that the new act's benefits will far outweigh any problems. I welcome your assistance in accomplishing this result.

Sincerely,

Bill Clinton

960116

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 1058, the "Private Securities Litigation Reform Act of 1995." This legislation is designed to reform portions of the Federal securities laws to end frivolous lawsuits and to ensure that investors receive the best possible information by reducing the litigation risk to companies that make forward-looking statements.

I support those goals. Indeed, I made clear my willingness to support the bill passed by the Senate with appropriate "safe harbor" language, even though it did not include certain provisions that I favor -- such as enhanced provisions with respect to joint and several liability, aider and abettor liability, and statute of limitations.

I am not, however, willing to sign legislation that will have the effect of closing the courthouse door on investors who have legitimate claims. Those who are the victims of fraud should have recourse in our courts. Unfortunately, changes made in this bill during conference could well prevent that.

This country is blessed by strong and vibrant markets and I believe that they function best when corporations can raise capital by providing investors with their best good-faith assessment of future prospects, without fear of costly, unwarranted litigation. But I also know that our markets are as strong and effective as they are because they operate -- and are seen to operate -- with integrity. I believe that this bill, as modified in conference, could erode this crucial basis of our markets' strength.

Specifically, I object to the following elements of this bill. First, I believe that the pleading requirements of the Conference Report with regard to a defendant's state of mind impose an unacceptable procedural hurdle to meritorious claims being heard in Federal courts. I am prepared to support the

high pleading standard of the U.S. Court of Appeals for the Second Circuit -- the highest pleading standard of any Federal circuit court. But the conferees make crystal clear in the Statement of Managers their intent to raise the standard even beyond that level. I am not prepared to accept that.

The conferees deleted an amendment offered by Senator Specter and adopted by the Senate that specifically incorporated Second Circuit case law with respect to pleading a claim of fraud. Then they specifically indicated that they were *not* adopting Second Circuit case law but instead intended to "strengthen" the existing pleading requirements of the Second Circuit. All this shows that the conferees meant to erect a higher barrier to bringing suit than any now existing -- one so high that even the most aggrieved investors with the most painful losses may get tossed out of court before they have a chance to prove their case.

Second, while I support the language of the Conference Report providing a "safe harbor" for companies that include meaningful cautionary statements in their projections of earnings, the Statement of Managers -- which will be used by courts as a guide to the intent of the Congress with regard to the meaning of the bill -- attempts to weaken the cautionary language that the bill itself requires. Once again, the end result may be that investors find their legitimate claims unfairly dismissed.

Third, the Conference Report's Rule 11 provision lacks balance, treating plaintiffs more harshly than defendants in a manner that comes too close to the "loser pays" standard I oppose.

I want to sign a good bill and I am prepared to do exactly that if the Congress will make the following changes to this legislation: first, adopt the Second Circuit pleading standards and reinsert the Specter amendment into the bill. I will support a bill that submits all plaintiffs to the tough pleading

standards of the Second Circuit, but I am not prepared to go beyond that. Second, remove the language in the Statement of Managers that waters down the nature of the cautionary language that must be included to make the safe harbor safe. Third, restore the Rule 11 language to that of the Senate bill.

While it is true that innocent companies are hurt by frivolous lawsuits and that valuable information may be withheld from investors when companies fear the risk of such suits, it is also true that there are innocent investors who are defrauded and who are able to recover their losses only because they can go to court. It is appropriate to change the law to ensure that companies can make reasonable statements and future projections without getting sued every time earnings turn out to be lower than expected or stock prices drop. But it is not appropriate to erect procedural barriers that will keep wrongly injured persons from having their day in court.

I ask the Congress to send me a bill promptly that will put an end to litigation abuses while still protecting the legitimate rights of ordinary investors. I will sign such a bill as soon as it reaches my desk.

William J. Clinton

THE WHITE HOUSE,

December 19, 1995.