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Value of 2008 Securities Class Action Settlements Cut by Half from 2007 Levels, According to New Report by Cornerstone Research

Future Damages Expected to Rise Due to Financial Crisis

Washington, DC, March 11, 2009—The value and number of federal securities class action settlements declined in 2008, according to *Securities Class Action Settlements: 2008 Review and Analysis*, an annual report by Cornerstone Research. The average settlement value fell by slightly more than 50% from \$62.7 million in 2007 to \$31.2 million in 2008. This decline reflects a sharp drop in multi-billion-dollar “mega-settlements,” which have been far more common in recent years. The decline in the total number of settlements was a more modest 10%, from 110 in 2007 to 99 in 2008. This decline is unlikely to signal a continuing trend. The ongoing financial crisis has caused an increase in litigation activity that could have an impact on settlement volume within the next year or two as cases associated with the subprime collapse and liquidity crisis begin to be resolved.

Commentary

Professor Joseph Grundfest, Director of the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research, made the following observations about the report:

- “This decline in the number of securities class action settlements does not come as a surprise. The inventory of cases waiting to be settled had been depleted by recent vigorous settlement activity. New litigation didn’t pick up the slack, at least until the recent uptick in lawsuits caused by the financial market meltdown. Settlement figures may well bounce back over the next few years as cases associated with potentially large damages related to the current financial collapse work their way through the judicial system.”
- “Settlements of pending actions against TARP recipients will raise novel public policy issues. Taxpayer dollars will, one way or another, fund these settlements. This simple fact could set off a debate about whether taxpayers should pay for these settlements, and about the effectiveness of the class action litigation mechanism altogether.”

Laura Simmons, Assistant Professor at the College of William & Mary Mason School of Business and co-author of the report, made the following observations:

- “We anticipate the financial crisis will have an impact on existing and future lawsuits. This distressed economic environment could play out in several different ways, potentially affecting both the amount of settlements as well as the speed at which cases are settled.”

- “One of the most intriguing developments was the finding that corporate financial restatements, which increased in number following Sarbanes-Oxley (SOX), no longer serve as an important predictor of settlement amounts. Our findings are consistent with other research indicating that in the post–Sox environment, investors have viewed restatement announcements as less significant events.”

Key Findings

- The median amount for cases settled in 2008 was \$8 million. While this figure is lower than 2007’s all-time high single-year median of \$9 million, it represents an increase over the median for all the cases settled from 1996 through 2007.
- The average length of the class period in 2008 reached a new high of over 800 days. This is nearly a year longer than the average for all prior settlements through 2007, which was 518 days.
- Average estimated damages of \$1.5 billion for all cases settled in 2008 fell below levels, adjusted for inflation, of approximately \$2 billion for settlements in 2003–2005 and were significantly lower than the stratospheric high of over \$6.5 billion recorded in 2006.
- The percentage of cases involving estimated damages in excess of \$1 billion, otherwise known as “mega-damages,” fell to 20%, the lowest rate in five years and well below the peak of 35% for 2006 settlements.
- Despite lower estimated damages, median Disclosure Dollar Losses—the dollar value decrease in the defendant firm’s market capitalization at the end of the class period—for cases settled in 2008 was one of the highest among post–Reform Act settlement years at \$110 million. It was second only to the median of \$134 million for cases settled in 2007.
- Institutional investors continue to actively participate in securities class actions and served as lead plaintiffs in more than 60% of settlements in 2008. Cases involving public pensions as lead plaintiffs are associated with significantly higher settlements.
- Reversing a recent trend, the number of cases involving companion derivative actions in 2008 decreased to 40% compared with 55% in 2007 and 45% in 2006. Derivative actions tend to be associated with larger class action cases and significantly higher settlement amounts.
- In 2008, accounting-related allegations, specifically alleged violations of GAAP, were included in almost 70% of settled cases. Cases with GAAP allegations had larger settlement amounts and a higher percentage of estimated damages compared to cases not involving accounting allegations.

Professor Grundfest and Professor Simmons are available to speak to the media about *Securities Class Action Settlements: 2008 Review and Analysis*. The full text of the report is available at the Cornerstone Research website (<http://securities.cornerstone.com>).

About Cornerstone Research

Cornerstone Research provides financial and economic analysis in litigation and regulatory proceedings, with a focus on litigation related to securities, antitrust, intellectual property, energy, accounting, and financial institutions. Cornerstone Research cosponsors the Stanford Law School Securities Class Action Clearinghouse. Information about Cornerstone Research is available at www.cornerstone.com.