

A Closer Look at the 2008 Securities Lawsuits

The pace of shareholder lawsuit filings increased significantly in 2008. There were 224 new securities lawsuits filed in 2008 – this represents a 30% increase over the 172 securities lawsuits filed in 2007, and an 88% increase over the 119 filed in 2006.

The 2008 filing total also represents the highest annual filing total since 2004. Further, all signs seem to indicate that the heightened filing levels will continue into 2009.

Overall Observations

The most material factor in this year's heightened securities litigation filing activity was the number of subprime and credit crisis-related securities lawsuit filings. Of the 224 new securities cases filed in 2008, 101 were subprime or credit crisis-related.

One factor that increased the number of subprime-related lawsuit filings was the influx of auction rate securities lawsuit filings. There were 21 of these auction rate securities lawsuits filed in 2008, largely in the first half of the year.

Another factor that increased filings was the introduction of Madoff-related litigation during December 2008. Investors have initiated Madoff-related securities class action lawsuits against at least seven distinct investment groups, and it is anticipated more litigation will continue.

2008 Filings by SIC Code

Although the companies targeted represent over 90 different U.S. Department of Commerce Standard Industrial Classification (SIC) Codes, 99 of the lawsuits were filed against companies with SIC Codes in the 6000 series (Finance, Insurance and Real Estate), including 19 in SIC Code 6021 (National Commercial Banks) and 20 in SIC Code 6211 (Security Brokers and Dealers).

There were 23 securities lawsuits filed in 2008 against defendant entities with no SIC Code designation. These defendants included mutual funds, hedge funds, private investment firms and other entities. Although these entities are without an SIC Code, they are all related to financial firms, which further underscores the fact that much of the securities litigation activity in 2008 was concentrated in the financial sector.

But while securities suits against companies in the financial sector were a predominant factor in the 2008 filings, there were other SIC Code categories that also witnessed significant litigation activity, including SIC Code 3674 (Semiconductors) which had ten filings; SIC Code 2834 (Pharmaceutical Preparations) which had nine lawsuit filings; and SIC Code 3845 (Electromedical and Electrotherapeutic Apparatus) which had five.

State and Court Distribution of Filings and Defendants

The concentration of cases in the financial sector also affected the geographic distribution of the 2008 case filings. Although securities lawsuits were filed in 48 different federal dis-

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trict courts (as well as several state courts), 97 of the 224 securities filings (or 43%) were filed in the Southern District of New York, where the financial industry is concentrated. The federal district with the second highest number of new lawsuit filings was the Northern District of California, where 12 new securities lawsuits were filed. Other districts with a material number of filings include the District of Massachusetts (10) and the Central District of California (9).

Another factor contributing to the significant number of filings in the Southern District of New York was the number of lawsuits filed there against foreign-domiciled companies. Overall, there were 34 foreign companies sued in securities lawsuits (representing 15% of all new securities suits), with all but five initiated in the Southern District of New York. The 34 foreign companies sued represented 17 different countries, with the largest numbers from Canada (8), China (5) and Switzerland (4).

The domestic U.S. companies hit with securities lawsuits were based in 31 different states, and the District of Columbia. The state with the largest number of new securities lawsuits was New York (42), followed by California (23), Massachusetts (13) and Ohio (10).

The Pace of Filings and Likely Future Trends

The pace of new lawsuit filings increased during the year, with 105 securities lawsuits filed during the first half of the year and 119 in the second half. The fourth quarter, with 67 new filings, was the most active quarter during 2008. There were a significant number of filings (30) in December (which is typically a quiet month for securities lawsuit filings). The filings in the fourth quarter, and especially in December, represent respectively, the highest quarterly and monthly totals in more than five years. These late-year activity levels suggest that the heightened level of securities filings will continue into 2009.

The conclusion that the increased securities litigation activity levels will continue is reinforced by the likelihood that the credit crisis litigation wave will continue to spread outside the financial sector in 2009.

About the Author

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A version of this article previously appeared on The D&O Diary, the author's Internet weblog. You can access the blog via our website at www.oakbridgeins.com. To monitor developments on this and other important topics relating to directors' and officers' liability, readers are encouraged to refer to The D&O Diary regularly.

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