

2010: Who's Getting Sued in Securities Class Action Lawsuits?

Securities class action lawsuits remain the most important factor driving D&O insurers' claims severity. Securities lawsuit filing levels ebb and flow over time. For most of 2010, securities suit filings levels have been relatively low. That being said, a series of recent high profile events have triggered an uptick in filing activity. With the arrival of the most recent cases, it is worth taking a look at the current targets of securities class action lawsuits.

Securities class action lawsuits remain the most important factor driving D&O insurers' claims severity. With the arrival of the most recent cases, it is worth taking a look at the current targets of securities class action lawsuits.

The most noteworthy targets of recent class action lawsuits are companies caught up in major public relations crises. This pattern started earlier this year when Toyota's 'sudden acceleration' debacle led to a host of securities class action lawsuit filings. This pattern has been repeated in connection with more recent public relations disasters.

For instance, Massey Energy's coal mining tragedy resulted in securities class action lawsuits. Likewise, after Goldman Sachs became the target in a high profile SEC enforcement action, investors quickly filed a shareholder suit against the company and its senior management.

The Deepwater Horizon oil spill has generated extensive litigation, including significant corporate and securities litigation. Both BP and Transocean, the platform's owner and operator, have been sued in a securities class action lawsuit in Louisiana. BP shareholders have also filed a derivative lawsuit, alleging that the company's senior officials breached their duties to the company by failing to adopt appropriate safety measures.

To find out which company will be next in line for one of these 'insult-to-injury' lawsuits, just keep a close eye on the headlines.

Another category of recent lawsuits is a polar opposite from the headline driven lawsuits described above. Beginning around the middle of 2009, one phenomenon that developed was the emergence of belated lawsuit filings, where the filing date was as much as a year or more after the proposed class period cut-off date. Several of the most recent filings fit this belated filing pattern.

For example, on May 11, 2010, plaintiffs' lawyers initiated a securities class action lawsuit in the Southern District of New York against Pfizer and certain of its directors and officers. The proposed class period cut-off date was January 23, 2009, nearly 16 months prior to the initial filing date.

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Similarly, on May 12, 2010, plaintiffs' lawyers initiated a securities class action lawsuit in the Western District of North Carolina against CommScope and certain of its directors and officers. The proposed class period cut-off date was October 30, 2008, more than 18 months before the initial filing date.

And on May 6, 2010, plaintiffs' lawyers filed a complaint in the District of Delaware against Heckmann Corporation and certain of its directors and officers, in which the proposed class period cut-off date was May 8, 2009, just short of one year before the filing date.

Belated filings have been an important aspect of the 2010 year-to-date securities class action lawsuit filings. Of the approximately 60 securities class action lawsuit filings this year (as of June 1, 2010), eleven (or about 18%) have been first filed at least one year after the proposed class period cut-off date. Furthermore, many of the filings in May 2010 were among these belated cases.

One trend that has not changed over the course of the past several years is the incidence of securities litigation involving companies in the financial services sector. Since the beginning of the subprime-related litigation wave in 2007, lawsuits against financial services companies have dominated securities class action filings. Though the number of filings against financial firms began to diminish around mid-2009, lawsuits against financial companies still represent the largest proportion of securities class action filings so far in 2010.

So far this year, securities class action lawsuits have been filed against roughly 60 entities. This represents entities in 29 different Standard Industrial Classification (SIC) Code categories (and ten of the 60 lack any SIC Code classification). Further, 17 of the 60 (or about 28%) involve companies in the 6,000 SIC Code series (Finance, Insurance and Real Estate). Indeed, most of the entities lacking SIC Code designations are also related to the financial sector, and thus lawsuits filed against these two groups (that is, the 6,000 SIC Code series entities and the entities without SIC Code designations) represent about 45% of all 2010 lawsuits.

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The most noteworthy difference between the 2010 lawsuit filings involving financial sector companies – compared to the most recent prior years’ filings – is the number of commercial banks among the financial companies that have been sued. Several of the most recent filings have targeted failed or troubled banks, including, for example: the May 12, 2010 lawsuit filed against BancorpSouth; the May 7, 2010 lawsuit against First Regional Bancorp, and the April 15, 2010 lawsuit against Frontier Financial.

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These lawsuits against failed and troubled commercial banks are likely to remain a significant factor in securities lawsuit filings for the foreseeable future. Over 240 banks failed between January 1, 2008 and May 31, 2010. In addition, the FDIC categorized more than 770 banks as ‘problem’ institutions in its quarterly banking profile for the first quarter of 2010. Given the magnitude of these problems, the probability is that litigation will continue to arise out of the banking sector.

Although lawsuit filings against financial sector entities have continued to predominate among all securities suit filings, lawsuits against the life science industry remain a familiar and important accompanying theme. With six lawsuits filed so far this year in the 283 SIC Code series (Drugs) and four more in the 384 SIC Code series (Surgical, Medical and Dental Instruments), lawsuits against life sciences companies remain as important a part of 2010 lawsuit filings as they have been in the past.

Several of the most recent securities class action lawsuit filings have involved life sciences companies, including the May 11, 2010 filing against Pfizer, and the May 11, 2010 filing against NBTY. Indeed, 2010 filings that do not involve either a financial services entity or a life sciences company are in the distinct minority.

In short, many of the recent filings reflect the latest developments in the headlines as well as the continuing problems from the credit crisis. Other recent filings reflect patterns that have emerged over the course of recent years. The most important conclusion from these observations is that the plaintiffs’ lawyers continue to file securities class action lawsuits in significant numbers, and the possibility of a securities class action lawsuit remains a significant exposure for every publicly traded company, particularly those in the financial services and life sciences sectors.

A version of this article previously appeared on The D&O Diary, the author's Internet weblog. You can access the weblog 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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