

Developments and Trends in U.S. Securities and Class Action Litigation

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October 14, 2010

Private securities actions have been a mainstay of the U.S. litigation landscape since the early 1930's and class actions have been prevalent since the 1960's.

However, in recent years, the allegations and target defendants of such suits have changed dramatically as plaintiffs' attorneys continue to chase the next big claim type. In 2008 and 2009, credit crisis and subprime-related securities actions against financial institutions dominated headlines. Credit crisis claims have since waned and the last 12 month period has seen a further shift in the types and targets of securities and class actions being filed. Industry reports confirm that fewer credit crisis-related claims are being filed. Instead, more traditional securities claims are being filed in sectors such as energy and technology and many claims focus on alleged breaches of fiduciary duty in connection with mergers and acquisitions. More particularly, this past 12 month period has seen the highest level of securities claims being filed against non-U.S. companies since 1995.

Recent developments may significantly impact the rate of future securities and class action filings. The U.S. Supreme Court issued important decisions broadening plaintiffs' ability to bring class actions in federal courts and restricting plaintiffs' rights to maintain fraud actions against non-U.S. companies. This year, the Obama administration also enacted sweeping financial reform provisions that increase incentives to whistleblowers and increase the Securities and Exchange Commission's ("SEC") and other governmental agencies' powers to detect and enforce U.S. securities laws. As in the past, increased governmental enforcement proceedings may result in a stark increase in follow-on private actions against target companies. Increased SEC investigations and private suits will inevitably result in higher related defense costs across all industry sectors, but most significantly in the financial sector. Fueled by these recent case law and legislative developments, the plaintiffs' bar may make the coming year a year worth watching.

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