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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re PRUDENTIAL FINANCIAL, INC. SECURITIES LITIGATION	Civil Action No. 2:19-cv-20839-SRC-CLW CLASS ACTION
This Document Relates To: ALL ACTIONS.	MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION Motion Return Date: June 13, 2024

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SECONDARY AUTHORITIES

Lead Plaintiff City of Warren Police and Fire Retirement System ("City of Warren" or "Lead Plaintiff"), individually and on behalf of the Settlement Class, respectfully submits this memorandum in support of its motion for final approval of the class-wide Settlement of this Litigation, including the proposed Plan of Allocation for distributing Settlement proceeds (the "Motion").[1]

I. PRELIMINARY STATEMENT

Pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rules") and the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), this Motion seeks final approval of the proposed Settlement following completion of the notice program approved by the Court. The Settlement provides for the payment of $35 million in cash (the "Settlement"). The Settlement here resulted from arm's-length mediation overseen by former District Court Chief Judge Freda Wolfson and represents an excellent recovery for the Settlement Class under the circumstances. The Settlement follows over four years of hard-fought litigation, including drafting a detailed amended complaint (the "Complaint") incorporating allegations based upon reports of former Prudential employees; opposing a complex motion to dismiss; pursuing a partially successful appeal of the dismissal of this case to the Third Circuit; and a full-

[1] Unless otherwise defined herein, all capitalized terms have the meaning set forth in the Stipulation of Settlement, dated February 12, 2024 (ECF 60-2) (the "Stipulation") or the Declaration of Daniel J. Pfefferbaum in Support of: (1) Final Approval of Class Action Settlement; (2) Approval of Plan of Allocation; and (3) an Award of Attorneys' Fees and Expenses (the "Pfefferbaum Declaration"), filed herewith.

day mediation session, preceded by the submission and exchange of written mediation statements. Through these efforts, Lead Counsel possessed a full understanding of all relevant issues, which they brought to bear in negotiating and agreeing to the Settlement. The Settlement secured by Lead Plaintiff and Lead Counsel represents both an aggregate and percentage recovery significantly higher than the median settlement in recent securities class actions.

As detailed herein, the Settlement easily satisfies the factors set forth in Rule 23(e)(2) and *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), for approving class action settlements, balancing the objective of attaining the highest possible recovery against the risks of continued litigation. This includes the risk that the Settlement Class could receive nothing, or far less than the Settlement, after trial and any appeal. In addition, the Plan of Allocation treats Settlement Class Members equitably and ensures that each Authorized Claimant will receive a *pro rata* share of the proceeds from the Settlement. Moreover, given the absence of any objections to date, the Settlement appears to enjoy unanimous support from the Settlement Class.

Lead Plaintiff therefore respectfully requests that the Court grant final approval of the proposed Settlement and Plan of Allocation.

II. BACKGROUND

A. Procedural History

1. The Initial Complaint and Lead Plaintiff Appointment

Lead Plaintiff commenced this securities class action on November 27, 2019. ECF 1.

On March 20, 2020, the Court appointed City of Warren as Lead Plaintiff and approved its selection of Robbins Geller Rudman & Dowd LLP as Lead Counsel. ECF 21.

2. Lead Counsel's Investigation and the Amended Complaint

Prior to and after being appointed, Lead Counsel conducted a comprehensive investigation into Prudential's alleged wrongful acts, which included, *inter alia*, reviewing and analyzing Prudential's filings with the SEC and other publicly available material related to the Company – including articles and analyst reports. Lead Counsel also identified and obtained relevant information from former Prudential employees. Pfefferbaum Decl., ¶4(a).

On June 3, 2020, Lead Plaintiff filed the Amended Complaint for Violations of the Federal Securities Laws (the "Complaint"). ECF 22. The Complaint alleged that between February 15, 2019 and August 2, 2019, inclusive, Defendants issued materially false and misleading statements and/or failed to disclose adverse information regarding, among other things, the Company's life insurance reserves,

including the methodology and assumptions used to determine those reserves, the adequacy of those reserves to meet and current and future claims costs, quarterly and annual updates to those reserves, the potential for negative mortality development (*i.e.*, higher than expected death rates), and, as a result, the Company's current financial results and future prospects. Pfefferbaum Decl., ¶16. The Complaint alleged violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934.

3. Defendants' Motion to Dismiss

On August 19, 2020, Defendants filed a motion to dismiss, arguing, among other things, that: (a) Lead Plaintiff failed to plead a strong inference of scienter; (b) the allegations regarding Prudential's reserve estimates were inactionable statements of opinion; (c) the alleged misstatements were either not false or misleading, were inactionable as puffery, or were protected forward-looking statements; (d) neither Item 303 nor Generally Accepted Accounting Principles ("GAAP") created a duty to disclose additional information; (e) Lead Plaintiff failed to plead loss causation; and therefore, (f) Lead Plaintiff's §20(a) claim must fail for lack of a §10(b) primary violation. Pfefferbaum Decl., ¶24. On October 7, 2020, Lead Plaintiff filed its opposition to the motion to dismiss. Lead Plaintiff argued that the Complaint adequately alleged each element of its claims with the requisite particularity, and that when the accounts of former Prudential employees were properly credited, and all inferences drawn in favor of Lead Plaintiff as required at the

pleading stage, the Complaint should be upheld. *Id.*, ¶25. Defendants filed their reply brief on November 6, 2020. On December 29, 2020, the Court issued an opinion granting Defendants' motion to dismiss on the basis that Lead Plaintiff failed to adequately plead a false or misleading statement, and dismissed the Complaint with prejudice.

4. Lead Plaintiff's Appeal

On January 26, 2021, Lead Plaintiff filed a timely appeal to the Third Circuit Court of Appeals. On February 10, 2021, Lead Plaintiff filed its Concise Summary of the Case, as required by Third Circuit LAR 33.3, and its opening brief on April 22, 2021. Defendants filed their Opposition Brief on June 21, 2021. Lead Plaintiff filed its Reply Brief on July 12, 2021. Oral argument on Lead Plaintiff's appeal was held on October 27, 2021.

On June 13, 2023, the Third Circuit issued a precedential opinion partially vacating the District Court's judgment with respect to the falsity of one alleged misrepresentation and remanded the case to the District Court to consider the adequacy of the Complaint's allegations with respect to scienter and loss causation. *City of Warren Police & Fire Ret. Sys. v. Prudential Fin., Inc.*, 70 F.4th 668 (3d Cir. 2023). The Third Circuit's decision shortened the proposed class period to June 5, 2019 through August 2, 2019, inclusive. *Id.*

5. Mediation and Settlement

Following remand of the Litigation, the Court held a status conference, during which it advised the parties to consider pursuing mediation with former District Court Chief Judge Freda Wolfson. Pfefferbaum Decl., ¶33.

The parties participated in a full-day mediation session with Judge Wolfson on November 30, 2023. *Id.*, ¶40. In advance of the mediation, the parties exchanged and provided to Judge Wolfson mediation statements with supporting exhibits. *Id.*

During the mediation, the parties negotiated in good faith, and at the end of the day Judge Wolfson made a mediator's proposal to settle the case for $35 million. The parties accepted the proposal. Their agreement included, among other things, the parties' agreement to settle the Litigation for mutual releases and a cash payment of $35 million. The parties negotiated and signed a stipulation of settlement on February 12, 2024.

6. The Court's Preliminary Approval of the Settlement

On February 14, 2024, Lead Plaintiff filed its Motion for Preliminary Approval of Class Action Settlement, together with supporting papers, including the Stipulation of Settlement, which set forth the terms and conditions of the Settlement. ECF 60. On March 8, 2024, the Court entered an Order granting preliminary approval of the Settlement and authorizing notice to the Settlement Class (the "Preliminary Approval Order"). ECF 71. As provided therein, objections to the Settlement, or requests to be

excluded from the Settlement Class, are due by May 23, 2024, and a Settlement Hearing is scheduled for June 13, 2024, at 10:00 a.m. *Id.*

B. The Notice Program Approved by the Court

In the Preliminary Approval Order, the Court approved the form and content of the Postcard Notice, Notice and Summary Notice, and ordered the Claims Administrator, Gilardi & Co. LLC ("Gilardi"), to (i) send the Postcard Notice to potential Class Members by email or First-Class Mail (where email addresses are not available) by no later than April 1, 2024; and (ii) publish the Summary Notice by no later than April 8, 2024. ECF 71, ¶10. The Court further found that these notice procedures "meet the requirements of [Rule] 23 . . . the [PSLRA], and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto." *Id.*, ¶7.

The notice program approved by the Court has since been carried out. On April 1, 2024, Gilardi established the settlement website at www.PrudentialSecuritiesSettlement.com, which includes, among other things, the Stipulation, the Notice, the Proof of Claim and Release, and an online claim submission page. *See* Declaration of Ross D. Murray ("Murray Decl."), ¶13, filed herewith. Distribution of the Postcard Notice took place on April 1, 2024. *Id.*, ¶¶5-7. Additionally, Gilardi received the names, addresses, and email addresses of additional Class Members or requests for additional Postcard Notices by numerous nominee

holders. *Id.*, ¶9. In total, 104,875 potential Class Members were notified of the Settlement by mail or email. *Id.*, ¶10. On April 8, 2024, Gilardi also published the Summary Notice in *The Wall Street Journal*, and over a national newswire. *Id.*, ¶11. To date, there have been no objections to any aspect of the Settlement. Nor have any Class Members requested exclusion from the Settlement Class. *Id.*, ¶¶14-15.

III. THE COURT SHOULD FINALLY CERTIFY THE CLASS FOR PURPOSES OF EFFECTUATING THE SETTLEMENT

In its motion for preliminary approval of the Settlement, Lead Plaintiff requested that the Court certify the Class for settlement purposes so that notice of the Settlement, the Settlement Hearing, and the rights of Class Members to object to the Settlement, request exclusion from the Class, or submit Proofs of Claim, could be issued. *See* ECF 60-1 at 21-28. In the Preliminary Approval Order, the Court addressed the requirements for class certification as set forth in Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The Court found that Rules 23(a) and (b)(3) were satisfied for purposes of settlement. ECF 71, ¶¶2-3. Specifically, in the Preliminary Approval Order, the Court preliminarily certified a Class of "all Persons who purchased the common stock of Prudential Financial, Inc. between June 5, 2019 and August 2, 2019, inclusive." *Id.*, ¶2. In addition, the Court preliminarily certified Lead Plaintiff as Class Representative and Lead Counsel as Class Counsel. *Id.*, ¶4.

Nothing has changed since the Court's entry of the Preliminary Approval Order to alter the propriety of the Court's preliminary certification of the Class for settlement purposes. Thus, for all of the reasons stated in Lead Plaintiff's motion for preliminary approval (incorporated herein by reference), Lead Plaintiff respectfully requests that the Court affirm its preliminary certification and finally certify the Class for purposes of carrying of the Settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and appoint Lead Plaintiff as Class Representative and Lead Counsel as Class Counsel.

IV. THE SETTLEMENT WARRANTS FINAL APPROVAL

In the Third Circuit, there is a "strong presumption in favor of voluntary settlement agreements," which is "especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'"[2] *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 2024 WL 815503, at *5 (E.D. Pa. Feb. 27, 2024) (same).

Rule 23(e)(2) governs the settlement of class action claims. It provides that a class action settlement may be approved by the Court upon a finding that it is "fair,

[2] Unless otherwise noted, citations are omitted, and emphasis is added throughout.

reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). To guide that assessment, the rule directs the Court to consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Id. The first two factors focus on "procedural" concerns, whereas the final two focus on the "substantive" terms of the settlement. Fed. R. Civ. P. 23, Advisory Committee Note to 2018 Amendments (the "2018 Advisory Note"). These points of inquiry overlap with the nine factors that traditionally guided the fairness analysis, as adopted by the Third Circuit in *Girsh*:

> "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings

> and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation."

521 F.2d at 157 (ellipses omitted); *see also Frederick v. Range Res.-Appalachia, LLC*, 2022 WL 973588, at *14 (W.D. Pa. Mar. 31, 2022) (Rule 23(e)(2) "overlap[s]" with *Girsh*), *aff'd*, 2023 WL 418058 (3d Cir. Jan. 26, 2023).[3]

In 1999, in *In re Prudential Ins. Co. of Am. Sales Prac. Litig. Agent Actions*, the Third Circuit added additional factors for a court to consider, when appropriate. *See* 148 F.3d 283, 323 (3d Cir. 1999). These factors include: "the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results

[3] Rule 23(e) was amended in 2018 to specify the matters which trial courts must consider when evaluating whether a proposed settlement is fair, reasonable, and adequate. As explained in the accompanying 2018 Advisory Note, this amendment was not designed to "displace" any of the multi-factor tests used by courts to review class action settlements, such as *Girsh*, but rather to focus the inquiry. Fed. R. Civ. P. 23, 2018 Advisory Note, subdiv. (e)(2).

achieved – or likely to be achieved – for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable." *Id.*

Both the *Girsh* and *Prudential* factors "'are a guide and the absence of one or more does not automatically render the settlement unfair.'" *Kamfsky v. Honeywell Int'l Inc.*, 2022 WL 1320827, at *4 (D.N.J. May 3, 2022). Instead, the Court "must look at all the circumstances of the case and determine whether the settlement is within the range of reasonableness under *Girsh*." *In re Valeant Pharms. Int'l Inc. Sec. Litig.*, 2020 WL 3166456, at *7 (D.N.J. June 15, 2020).

Finally, the Third Circuit has repeatedly held that a class action settlement is entitled to an initial presumption of fairness if: "'(1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.'" *Warfarin*, 391 F.3d at 535; *see also In re NFL Players Concussion Inj. Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) (same).

As described below and in the Pfefferbaum Declaration, the Settlement is an outstanding result under the circumstances, is presumptively fair, and clearly satisfies each element of Rule 23(e)(2) and the *Girsh* and *Prudential* factors. This is especially

so in light of the difficulty in proving falsity, materiality, scienter, loss causation, and damages.

V. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR APPROVAL

A. Lead Plaintiff and Lead Counsel Have More than Adequately Represented the Settlement Class

The first factor under Rule 23(e)(2) addresses the adequacy of representation by the class representative(s) and class counsel. Fed. R. Civ. P. 23(e)(2)(A). This overlaps with the third *Girsh* factor, which covers the stage of proceedings and the amount of discovery completed. *See Girsh*, 521 F.2d at 157; *see also Warfarin*, 391 F.3d at 535 (similar factor for presumption of fairness).

The Court previously expressed confidence in the abilities of Lead Plaintiff and Lead Counsel by appointing each to their respective positions. *See* ECF 21. The Court's confidence was well-placed as, since then, they have vigorously pursued this Litigation. Among many other undertakings, Lead Counsel conducted a thorough investigation into the alleged violations of the federal securities laws; drafted a detailed amended complaint; opposed Defendants' motion to dismiss; appealed the Court's dismissal of the case to the Third Circuit, resulting in a partial remand of the case; utilized the services of experts and consultants, including investigators, forensic accountants, and a damages expert; prepared a mediation statement; and engaged in settlement negotiations and a mediation session led before an experienced mediator.

See generally Pfefferbaum Decl. At each of these stages, Lead Counsel successfully advanced this case on behalf of the Settlement Class.

Lead Counsel are highly qualified lawyers well-versed in prosecuting complex class actions under the federal securities laws. Robbins Geller has successfully prosecuted hundreds of securities class actions on behalf of damaged investors. *See, e.g.*, *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2021 WL 358611, at *6 (D.N.J. Feb. 1, 2021) (finding Robbins Geller skilled and efficient and noting that it "achieved a $1.21 billion settlement – the ninth largest PSLRA class action ever recovered – for the benefit of the class") *aff'd in part, dismissing appeal in part, TIAA v. Valeant Pharms. Int'l, Inc.*, 2021 WL 6881210 (3d Cir. Dec. 20, 2021); *McDermid v. Inovio Pharms., Inc.*, 467 F. Supp. 3d 270, 281 (E.D. Pa. 2020) ("Robbins Geller is a preeminent litigation firm with a record of winning complex securities class actions."); *see also* accompanying Declaration of Daniel J. Pfefferbaum Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, Ex. E (Robbins Geller firm resume). In addition, as a sophisticated institutional investor that provides pension service and benefits to its Police and Fire Department participants and their families, City of Warren's support for the Settlement carries substantial weight. *See* Declaration of Lead Plaintiff, ¶5, filed herewith.

Lead Plaintiff and Lead Counsel have thus adequately represented the Settlement Class under Rule 23(e)(2)(A) and have secured "'an adequate appreciation of the merits of the case.'" *Warfarin*, 391 F.3d at 537. "[C]ourts in this Circuit traditionally 'attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class.'" *Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012), *aff'd*, 559 F. App'x 151 (3d Cir. 2014). Bringing their experience and knowledge of this case to bear, Lead Plaintiff and Lead Counsel all believe that the Settlement is in the best interests of the Class.

B. The Settlement Negotiations Were Conducted at Arm's-Length and with the Oversight of an Experienced Mediator

The second factor under Rule 23(e)(2) considers whether the Settlement was negotiated at arm's length. *See* Rule 23(e)(2)(B). A class action is considered presumptively fair where, as here, the parties, through capable counsel, have engaged in arm's-length negotiations. *See also Warfarin*, 391 F.3d at 535 (citing arm's-length negotiations as a factor in assessing presumption of fairness).

The parties engaged in arm's-length negotiations, including mediation conducted by an experienced mediator, former Chief Judge Wolfson. In advance of the mediation session, the parties prepared and exchanged opening statements. These mediation statements were extensively informed by the facts obtained throughout the investigation and litigation process. The parties negotiated in good faith, and

ultimately agreed to the mediator's proposal to settle the case. Pfefferbaum Decl., ¶40.

This record clearly demonstrates that the parties negotiated at arm's length. *See Copley v. Evolution Well Servs. Operating, LLC*, 2023 WL 1878581, at *4 (W.D. Pa. Feb. 10, 2023) (settlement from mediation sessions before experienced mediator was "arm's length"); *Utah Ret. Sys. v. Healthcare Servs. Grp. Inc.*, 2022 WL 118104, at *8 (E.D. Pa. Jan. 12, 2022) (involvement of neutral mediator points to an arm's-length negotiation). Indeed, participation of an "independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties." *McDermid v. Inovio Pharms., Inc.*, 2023 WL 227355, at *5 (E.D. Pa. Jan. 18, 2023) (alteration in original).

When a settlement results from arm's-length negotiations, the assessment by experienced counsel that a settlement is in the best interest of the class is entitled to "considerable weight." *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *11 (E.D. Pa. Jan. 25, 2016) (courts "'afford[] considerable weight to the views of experienced counsel regarding the merits of the settlement'"); *In re NFL Players' Concussion Inj. Litig.*, 307 F.R.D. 351, 387 (E.D. Pa. 2015) ("'A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.'"), *amended*, 2015 WL 12827803 (E.D. Pa. May 8, 2015), *aff'd*, 821 F.3d 410 (3d Cir. 2016). This flows

from the principle that "a settlement represents the result of a process by which opposing parties attempt to weigh and balance the factual and legal issues that neither side chooses to risk taking to final resolution." *Fulton-Green v. Accolade, Inc.*, 2019 WL 4677954, at *9 (E.D. Pa. Sept. 24, 2019). Bringing its experience and knowledge of this case to bear, Lead Counsel believes that the Settlement is in the best interests of the Class. This factor thus weighs strongly in favor of approval.

C. The Settlement Is Adequate Considering the Costs, Risks, and Delays of Trial and Appeal

The third consideration under Rule 23(e)(2), which overlaps with *Girsh* factors 1 and 4-9, is the adequacy of the settlement in light of the costs, risks, and delay of continued litigation. Fed. R. Civ. P. 23(e)(2)(C)(i). Securities cases are "'notably complex, lengthy, and expensive . . . to litigate.'" *Beltran v. SOS Ltd.*, 2023 WL 319895, at *4 (D.N.J. Jan. 3, 2023) (Pascal, M.J.), *report & recommendation adopted*, 2023 WL 316294 (D.N.J. Jan. 19, 2023). This case has already been pending for over four years, has been reduced to a single alleged misrepresentation for a shortened class period, and has not proceeded beyond the pleading stage. Lead Plaintiff would undoubtedly face substantial additional costs, risks, and delays were litigation to continue, including in subsequent motion to dismiss briefing on scienter and loss causation, fact and expert discovery, summary judgment, trial, and appeal. At a minimum, proceeding through these stages of litigation would significantly prolong the time until any Class Member receives a financial recovery. "The Court weighs the

value of an immediate guaranteed settlement against the challenges that remain in proceeding with litigation." *Honeywell*, 2022 WL 1320827, at *5. As explained below, the Settlement is more than adequate in light of these obstacles.

1. Risks and Costs of Establishing Liability and Damages

Lead Plaintiff and Lead Counsel believe that their case is strong but acknowledge that there would be risks involved in further litigation. Defendants have contested each of Lead Plaintiff's allegations, maintaining that: (a) performance in the Hartford Block of policies was not indicative of performance of Individual Life as a whole; (b) Defendant Tanji spoke the truth about Prudential's ongoing actuarial assumption review; (c) Defendant Tanji's June 5 Investor Day statements, even if found misleading, were not made recklessly or knowingly; (d) the actuarial assumption review process was extremely complex and could not be simplified in the manner in which Lead Plaintiff alleged; and (e) even if the fraud had occurred, the revelation of other significant news disclosed on July 31, 2019 would make it impossible for Lead Plaintiff to recover the amount of damages to which it believes the Class is entitled. Pfefferbaum Decl., ¶44.

Further, nearly all of the evidence would need to be reviewed by subject-matter experts given the complex nature of Lead Plaintiff's claims. As courts recognize, "proving damages in securities fraud cases . . . 'invariably requires expert testimony which may, or may not be, accepted by a jury.'" *SOS Ltd.*, 2023 WL 319895, at *5.

Because Lead Plaintiff bears the burden of proof, Defendants could win at summary judgment on any of these issues through a prevailing *Daubert* motion. If the case proceeded to trial, these issues would be resolved through an inherently uncertain "battle of the experts." *Viropharma*, 2016 WL 312108, at *12; *see also Inovio*, 2023 WL 227355, at *8 ("[c]onflicting expert testimony at trial would introduce further uncertainty"); *SOS Ltd.*, 2023 WL 319895, at *5 (battle of experts "can go either way").

While there are strong responses to Defendants' arguments on liability and damages, they pose undeniable risks. Any one of these arguments, if successful, could have resulted in the claims at issue being severely curtailed or even eliminated. *See Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *4 (E.D. Pa. Apr. 5, 2019) (Courts should "'give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their cause of action.'"). Moreover, any trial victory for Lead Plaintiff would inevitably lead to an appeal, which at a minimum would have resulted in substantial delays before any financial recovery. *See Honeywell*, 2022 WL 1320827, at *4 ("The time and expense of a securities class action trial is substantial and would very likely lead to post-trial motions and subsequent appeals . . . ."). The risks associated with establishing liability and

damages at trial, and preserving any trial victory through appeal, thus weigh in favor of approving the Settlement.

At a minimum, the Settlement spares the Class the substantial costs and delays associated with further litigation. *Inovio*, 2023 WL 227355, at *6. Indeed, it is not uncommon for a securities fraud case to take many years to proceed from filing through appeal.[4] This case is no exception. Here, after four years of litigation, the parties still have not started the discovery phase of the litigation. Based on the course of litigation to date, continued proceedings would likely be lengthy, procedurally complex, and thus costly.

In short, a potential recovery for the Class – if any – would occur years from now after incurring significant costs. By contrast, the Settlement provides an immediate and substantial recovery without the risks, expense, and delays of continued litigation. The risks and costs associated with establishing liability and damages at trial and appeal thus weigh in favor of approving the Settlement. *See SOS Ltd.*, 2023 WL 319895, at *5 ("certainty" of settlement is favorable to the "gamble" of bringing securities claims to trial); *Whiteley v. Zynebra Pharms., Inc.*, 2021 WL

[4] The time required to prosecute a full-length securities claim to fruition itself poses the risk that a change in law could jeopardize even seemingly secure victories under then-existing standards. *See, e.g., In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533 (S.D.N.Y. 2011) (Supreme Court decision after entry of verdict in plaintiffs' favor reduced a billion-dollar verdict into a $78 million recovery in case brought in 2005), *aff'd*, 838 F.3d 223 (2d Cir. 2016).

4206696, at *3 (E.D. Pa. Sept. 16, 2021) ("[A]voidance of unnecessary expenditure of time and resources benefits all parties and weighs in favor of approving the settlement.").

2. The Risks of Maintaining the Class Action Through Trial

Lead Plaintiff's class certification motion has not yet been filed. Defendants would invariably vigorously oppose the motion. Had the Court declined to certify the class, the case would likely be over. Even if the Court grants an eventual class certification motion, Defendants still could have pressed a Rule 23(f) interlocutory petition or moved to decertify the class or trim the class period before trial or on appeal, as class certification may be reviewed at any stage of the litigation. *SOS Ltd.*, 2023 WL 319895, at 5.[5] Therefore, the sixth *Girsh* factor supports approval of the Settlement.

3. The Ability of Defendants to Withstand a Greater Judgment

This *Girsh* factor is neutral. Although Defendants may be able to withstand a greater judgment, "where the other *Girsh* factors weigh in favor of approval, this factor should not influence the overall conclusions that the settlement is fair, reasonable, and adequate." *Healthcare Servs. Grp.*, 2022 WL 118104, at *10.

[5] The class period has already been shortened by virtue of the Third Circuit's decision. *See supra* at §IV.A.4.

4. The Settlement Falls Well Within the Range of Reasonableness

"'The last two *Girsh* factors ask whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial.'" *Jackson v. Wells Fargo Bank, N.A.*, 136 F. Supp. 3d 687, 705 (W.D. Pa. 2015). In making this "range of reasonableness" assessment, courts do not need to make a precise estimate of damages. *See Inovio*, 2023 WL 227355, at *8 ("[T]he inability to determine the precise amount of damages . . . does not render the Court unable to conduct this [range of reasonableness] analysis."). "These factors examine 'whether the settlement represents a good value for a weak case or a poor value for a strong case.'" *Healthcare Servs. Grp.*, 2022 WL 118104, at *10 (quoting *Warfarin*, 391 F.3d at 538). "'" [T]he fact that a proposed settlement may only amount to a fraction of the potential recovery"'" is not dispositive, particularly in securities class actions. *In re AT&T Corp.*, 455 F.3d 160, 170 (3d Cir. 2006). Rather, the recovery must be considered relative to "'all the risks considered under *Girsh*.'" *Id.*

It is not possible to quantify precisely the risks to recovery posed by Defendants' arguments as to falsity, materiality, scienter, loss causation, and damages described above. Nevertheless, the Settlement represents a substantial percentage of damages that could reasonably be expected to be proved at trial. "Typical settlement recoveries in securities class action cases range from roughly 1.6 to 14 percent." *SOS Ltd.*, 2023 WL 319895, at *6 (recovering approximately 6.5%). The $35 million

recovery under the Settlement – or approximately 17% of the total estimated recoverable damages – surpasses many securities class action settlements in this Circuit. *See, e.g.*, *Healthcare Servs. Grp.*, 2022 WL 118104, at *8 (6.4% recovery); *Schuler v. Meds. Co.*, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (4% recovery); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *8 (D.N.J. July 29, 2013) (7% recovery); *In re Hemispherx Biopharma, Inc. Sec. Litig.*, 2011 WL 13380384, at *6 (E.D. Pa. Feb. 14, 2011) (5.2% recovery); *see also AT&T*, 455 F.3d at 170 (affirming approval of settlement that provided a 4% recovery).

This recovery of approximately 17% of recoverable damages significantly exceeds the 4.5% median settlement as a percentage recovery in securities class actions settled in 2023 and the 4.8% median settlement recovery for those cases settled between 2014-2022. *See* Exhibit 1 attached hereto, at 6, fig. 5 (Laarni T. Bulan and Laura E. Simmons, *Securities Class Action Settlements: 2023 Review and Analysis* (Cornerstone Research 2024)).

In addition, the aggregate financial recovery of $35 million is significantly larger than the median securities class action settlement values over the last five years, which range from $11.7 million to $15 million. *See id.* at 1.

Moreover, while Lead Plaintiff estimates that the cash recovery represents approximately 17% of potentially recoverable damages, this assumes that Lead Plaintiff would prevail on all of its arguments regarding the causes of the declines in

Prudential's stock price on the "corrective disclosure" dates that Lead Plaintiff alleged, among other issues. Pfefferbaum Decl., ¶60. A jury could find at trial that recoverable damages are significantly lower, and thus the Settlement would represent a larger percentage recovery for Class Members.

Given the complexity of this case and the risks and delay inherent in continued litigation, a $35 million recovery is an outstanding result. Taking into account that this case has been litigated for more than four years, and the significant amount of the recovery, the Settlement here falls well within the range of reasonableness and should be approved. *See Girsh*, 521 F.2d at 157.

D. The Settlement Satisfies the Remaining Rule 23(e)(2) Factors

The remaining factors of Rule 23(e)(2) require courts to consider: (i) the effectiveness of the proposed method for distributing relief; (ii) the terms of the proposed attorneys' fees, including the timing of payment; (iii) the existence of any other agreements; and (iv) whether the settlement treats class members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv); Fed. R. Civ. P. 23(e)(2)(D). These factors also support approval here.

1. The Proposed Method for Distributing Relief Is Effective

Under Rule 23(e)(2)(C)(ii), the court must "scrutinize the method of claims processing to ensure that it facilitates [the] filing of legitimate claims." Fed. R. Civ. P.

23, 2018 Advisory Note, subdiv. (e)(2). Here, the method for processing claims follows well-established and effective procedures. Class Members must provide basic personal information and trading records to substantiate their transactions in Prudential common stock. Requiring such documentation is reasonable because "there is no central repository of the owners of the securities" and it "prevent[s] fraudulent claims." *SOS Ltd.*, 2023 WL 319895, at *7; *see also In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.* ("*Innocoll I*"), 2022 WL 717254, at *5 (E.D. Pa. Mar. 10, 2022) (It is "standard" to require the submission of records "proving ownership of the shares" in securities cases.). In addition, claimants have the opportunity to cure claim deficiencies or request that the Court review any claim denial (Stipulation, ¶¶5.7-5.8). *See Se. Pa. Trans. Auth. v. Orrstown Fin. Servs., Inc.*, 2023 WL 1454371, at *11 (M.D. Pa. Feb. 1, 2023) (allowing claimants to "cure any deficiencies . . . or request that the Court review a denial" supports approval under Rule 23(e)(2)).

2. The Requested Attorneys' Fees Are Reasonable

As set forth in more detail in the accompanying Memorandum of Law in Support of Motion for Attorneys' Fees and Litigation Expenses ("Fee Brief"), Lead Counsel's request for an award of attorneys' fees of 25% of the Settlement Fund is reasonable and appropriate. Further, because the $35 million cash component of the Settlement has already been fully funded, there is no risk that counsel will be paid but

Class Members will not. Importantly, the Settlement may not be terminated based on a ruling regarding attorneys' fees. *See* Stipulation, ¶7.5. This further supports approval. *See Innocoll I*, 2022 WL 717254, at *5.

3. The Parties Have No Other Agreements Besides an Agreement to Address Requests for Exclusion

As discussed in the motion for preliminary approval, and described in the Notice, Lead Plaintiff and Defendants have entered into a standard supplemental agreement providing Defendants with the right (but not the obligation) to terminate the Settlement in the event valid requests for exclusion from the Class exceed the criteria set forth in that agreement. As other courts have recognized, "'[t]his type of agreement is standard in securities class action settlements,'" *Orrstown Fin. Servs.*, 2023 WL 1454371, at *12, and "does not affect the adequacy of the relief provided to the class." *Inovio Pharms.*, 2023 WL 227355, at *6.[6]

4. Class Members Will Be Treated Equitably, and the Reaction of the Class Supports Final Approval

Rule 23(e)(2)(D) requires the Court to consider whether class members will be treated equitably. All Class Members will be treated equitably under the terms of the Stipulation, which provides that each Class Member who properly submits a valid Proof of Claim – including Lead Plaintiff – will receive a *pro rata* share of the

[6] Pursuant to the Court's Order (ECF 61), the Supplemental Agreement was provided to the Court for its *in camera* review.

Settlement proceeds based on the terms of the Plan of Allocation. This treats Class Members fairly, relative to one another. *See Inovio Pharms.*, 2023 WL 227355, at *6 (plan that provides payments proportional to investment losses treats class members equitably); *Healthcare Servs. Grp.*, 2022 WL 118104, at *9 (finding class members treated equally because "plan of allocation apportions the net settlement fund among class members based on when they purchased and sold their HCSG common stock. This method ensures that settlement class members' recoveries are based on the relative losses they sustained, and eligible class members will receive a pro rata distribution from the net settlement fund calculated in the same manner.").

Further, out of the thousands of potential Class Members, there have been no objections filed to date. Pfefferbaum Decl., ¶56. "[W]hen . . . objectors are few and the class members many, there is a strong presumption in favor of approving the settlement." *Healthcare Servs. Grp.*, 2022 WL 118104, at *9. "The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement . . . ." *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001). To the extent that any objections to the Settlement are made subsequent to this filing, they will be addressed in Lead Plaintiff's reply.

E. The Settlement Satisfies the Applicable *Prudential* Factors

In addition to the Rule 23(e)(2) and *Girsh* factors, the applicable *Prudential* factors support the Settlement. Lead Plaintiff is well-informed of the strengths and weaknesses of the case after an extensive investigation and significant litigation and has made an informed decision about the appropriate settlement value of its claims; Class Members had an opportunity to opt out of the Class; the method for processing claims is fair and reasonable; and, as explained in the Fee Brief, the requested attorneys' fees are fair and reasonable. *In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.*, 2022 WL 16533571, at *7-*8 (E.D. Pa. Oct. 28, 2022) ("*Innocoll II*").

Each factor identified in Rule 23(e)(2) and the Third Circuit's *Girsh* and *Prudential* opinions is satisfied. Moreover, pursuant to *Warfarin*, the Settlement is entitled to a presumption of fairness. 391 F.3d at 535. Given the litigation risks involved, and the complexity of the underlying issues, a recovery of $35 million in cash is an excellent result and could not have been achieved without the commitment of Lead Plaintiff and the hard work of Lead Counsel. Lead Plaintiff and Lead Counsel respectfully submit that the Settlement is fair, reasonable, and adequate, and should be granted final approval.

VI. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

As set forth in the Notice, the Net Settlement Fund will be divided among Class Members who submit valid Claims pursuant to the Plan of Allocation. *See* Murray

Decl., Ex. B (Notice). "'[A]pproval of a plan of allocation . . . is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate.'" *Innocoll II*, 2022 WL 16533571, at *8. A plan of allocation need not be "'perfect,'" it "'need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.'" *SOS Ltd.*, 2023 WL 319895, at *9. "'Courts generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable.'" *Rossini v. PNC Fin. Servs. Grp., Inc.*, 2020 WL 3481458, at *17 (W.D. Pa. June 26, 2020) (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011)).

Here, the proposed Plan of Allocation is fair and reasonable. The Plan of Allocation was developed with the assistance of Lead Counsel's damages consultant. *See* Pfefferbaum Decl., ¶¶51-52. The Plan of Allocation distributes the Net Settlement Fund on a *pro rata* basis, as determined by the ratio between each valid claim and the sum of all valid claims. The calculation of each claim will depend upon several factors, including when the Prudential shares were purchased or acquired, and whether they were sold or held. Once each claim is calculated and verified, and the distribution ratio is determined, the Net Settlement Fund (*i.e.*, the Settlement Fund less Notice and Administration Expenses, Taxes and Tax Expenses, and all Court-approved attorneys' fees and litigation expenses) will be distributed to Authorized

Claimants entitled to a distribution of at least $10.00. Stipulation, ¶5.10. Any amount remaining following the initial distribution will be further distributed among Authorized Claimants to the extent economically feasible. *Id.* If further re-distribution of funds remaining in the Net Settlement Fund would not be cost effective, the Plan of Allocation calls for any remaining balance to be contributed to an appropriate non-sectarian, non-profit charitable organization(s) serving the public interest selected by Lead Counsel. *Id.*

This plan is fair, reasonable, and adequate, and consistent with standard practice in securities cases. *See Inovio Pharms.*, 2023 WL 227355, at *9 (approving plan that allocates funds in proportion to each member's losses based on "when each member purchased and sold his . . . stock[]"); *see also, e.g.*, *SOS Ltd.*, 2023 WL 319895, at *7 (same); *Honeywell*, 2022 WL 1320827, at *6 (same); *Healthcare Servs. Grp.*, 2022 WL 118104, at *11 (same); *Innocoll II*, 2022 WL 16533571, at *8 (same). No objections to the Plan of Allocation have been filed by Class Members. For all these reasons, the Plan of Allocation should be approved.

II. CONCLUSION

The Settlement before the Court for approval is a very good one, under any measure, and the proposed Plan of Allocation is an equitable method by which to distribute the Net Settlement Fund. For all the reasons stated above and in the accompanying declarations, Lead Plaintiff respectfully requests that the Court grant its

motion for final approval of the Settlement and the Plan of Allocation as fair, reasonable, and adequate.

DATED: May 9, 2024

Respectfully submitted,

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EXHIBIT 1

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2023 Review and Analysis

Table of Contents

Figures and Appendices

Analyses in this report are based on nearly 2,200 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2023. See page 17 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

2023 Highlights

In 2023, while the number of settled securities class actions declined 21% relative to the 15-year high in 2022, the median settlement amount, median "simplified tiered damages," and median total assets of issuer defendants all remained at historically elevated levels.[1]

- There were 83 securities class action settlements in 2023 with a total settlement value of approximately $3.9 billion, compared to 105 settlements in 2022 with a total settlement value of approximately $4.0 billion. (page 3)
- The median settlement amount of $15 million is the highest level since 2010 and represents an increase of 11% from 2022, while the average settlement amount ($47.3 million) increased by 25% over 2022. (page 4)
- There were nine mega settlements (equal to or greater than $100 million), with a total settlement value of $2.5 billion. (page 3)
- In 2023, 34% of cases settled for more than $25 million, the highest percentage since 2012. (page 4)
- Median "simplified tiered damages" declined 16% from the record high in 2022, but remained at elevated levels compared to the prior nine years.[2] (page 5)
- Issuer defendant firms involved in cases that settled in 2023 were 19% larger than defendant firms in 2022 settlements as measured by median total assets, which reached its highest level since 1996. (page 5)
- The median duration from the case filing to the settlement hearing date of 3.7 years in 2023 was unusually high. Since the Reform Act's passage, the time to settle reached this level in only one other year (2006). (page 14)

Figure 1: Settlement Statistics

(Dollars in millions)

	2018–2022	2022	2023
Number of Settlements	420	105	83
Total Amount	$19,545.7	$3,974.7	$3,927.3
Minimum	$0.4	$0.7	$0.8
Median	$11.7	$13.5	$15.0
Average	$46.5	$37.9	$47.3
Maximum	$3,640.9	$842.9	$1,000.0

Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

Author Commentary

Insights and Findings

Continuing an increase observed in 2022, the size of settled cases in 2023 (measured by the median settlement amount) reached the highest level in over a decade. This occurred despite a decline in median "simplified tiered damages," a measure of potential shareholder losses that our research finds to be the single most important factor in explaining individual settlement amounts.

The size of the issuer defendant firms involved in cases settled in 2023 (measured by median total assets) also increased. Indeed, median total assets for defendants in 2023 settlements reached an all-time high among post–Reform Act settlements and was 19% higher than in 2022. Issuer defendant assets serve, in part, as a proxy for resources available to fund a settlement and are highly correlated with settlement amounts. Thus, the increase in defendant assets likely contributed to the growth in settlement amounts in 2023.

One factor causing the increase in asset size of defendant firms in cases settled in 2023 may be that, overall, these firms were more mature than in prior years. Specifically, the median age as a publicly traded firm was 16 years, compared to the median age of 11 years for cases settled from 2014 to 2022. In addition, the percentage of cases settled in 2023 that involved firms in the financial sector (over 15%) was higher than the prior nine-year average. Firms in the financial sector involved in securities class action settlements have consistently reported higher total assets than other issuer firm defendants.

In 2023, cases took longer to settle. They also reached more advanced stages prior to resolution, including a smaller proportion of cases settled before a ruling on class certification compared to prior years. Since longer periods to reach settlement are also correlated with higher settlement amounts, this increase is consistent with the higher overall median settlement value.

Securities class actions settled in 2023 continued to take longer to resolve—disruptions associated with the COVID-19 pandemic may have contributed to this increase.

Dr. Laarni T. Bulan
Principal, Cornerstone Research

Longer times to reach a settlement and more advanced litigation stages are also typically correlated with greater case activity, as measured by the number of entries on the court dockets. Surprisingly, the median number of docket entries increased only slightly compared to 2022. This, and the fact that over 80% of cases settled in 2023 had been filed by the end of 2020, suggests that the lengthened time to settlement can potentially be explained by delays related to the COVID-19 pandemic.

The size of issuer defendants in 2023 settlements surpassed even the previous record in 2022, in part due to an increase in the number of financial sector defendants to the highest level in the last decade.

Dr. Laura E. Simmons
Senior Advisor, Cornerstone Research

Looking Ahead

While we do not necessarily expect new record highs in settlement dollars in the upcoming years, it is possible that settlement amounts will remain at relatively high levels, based on recent trends in securities class action filings, including elevated levels of Disclosure Dollar Loss and Maximum Dollar Loss. (See Cornerstone Research's *Securities Class Action Filings—2023 Year in Review*.)

Further, the most recent emergence of case filings related to the 2023 bank failures, combined with a relatively high proportion in the last few years of settled cases involving financial firms, may result in a continued rise in the asset size of issuer defendants involved in settlements. This may also contribute to high settlement amounts.

Additionally, considering the levels of filing activity in recent years, we do not anticipate dramatic increases in the number of cases settled in the upcoming years.

—Laarni T. Bulan and Laura E. Simmons

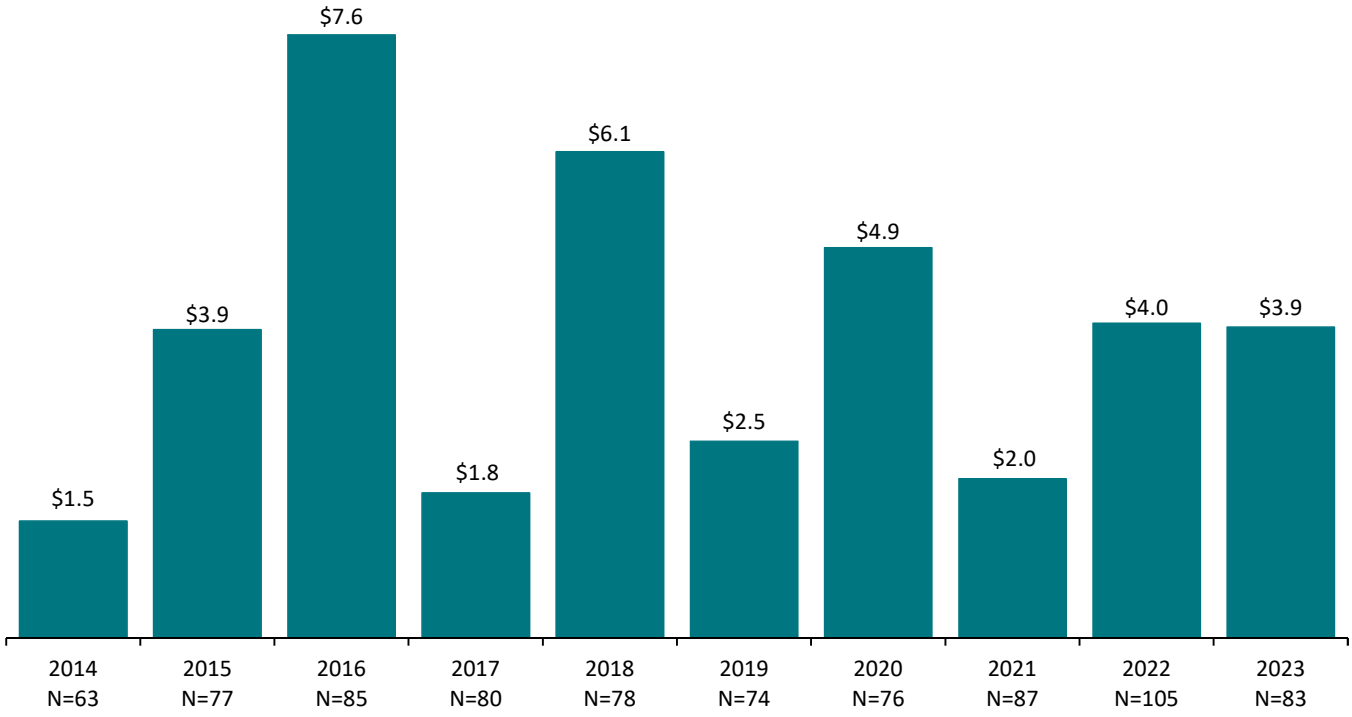
Total Settlement Dollars

- While the number of settlements in 2023 declined by more than 20% from 2022, 2023 total settlement dollars were roughly the same as in 2022.
- The nine mega settlements in 2023—the highest number since 2016—ranged from $102.5 million to $1 billion. *(See Appendix 4 for an analysis of mega settlements.)*
- Cases involving institutional investors as lead plaintiffs represented 86% of total settlement dollars in 2023, in line with the percentage in 2022.

Mega settlements accounted for nearly two-thirds of 2023 total settlement dollars, up from 52% in 2022.

Figure 2: Total Settlement Dollars
2014–2023

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. “N” refers to the number of cases.

Settlement Size

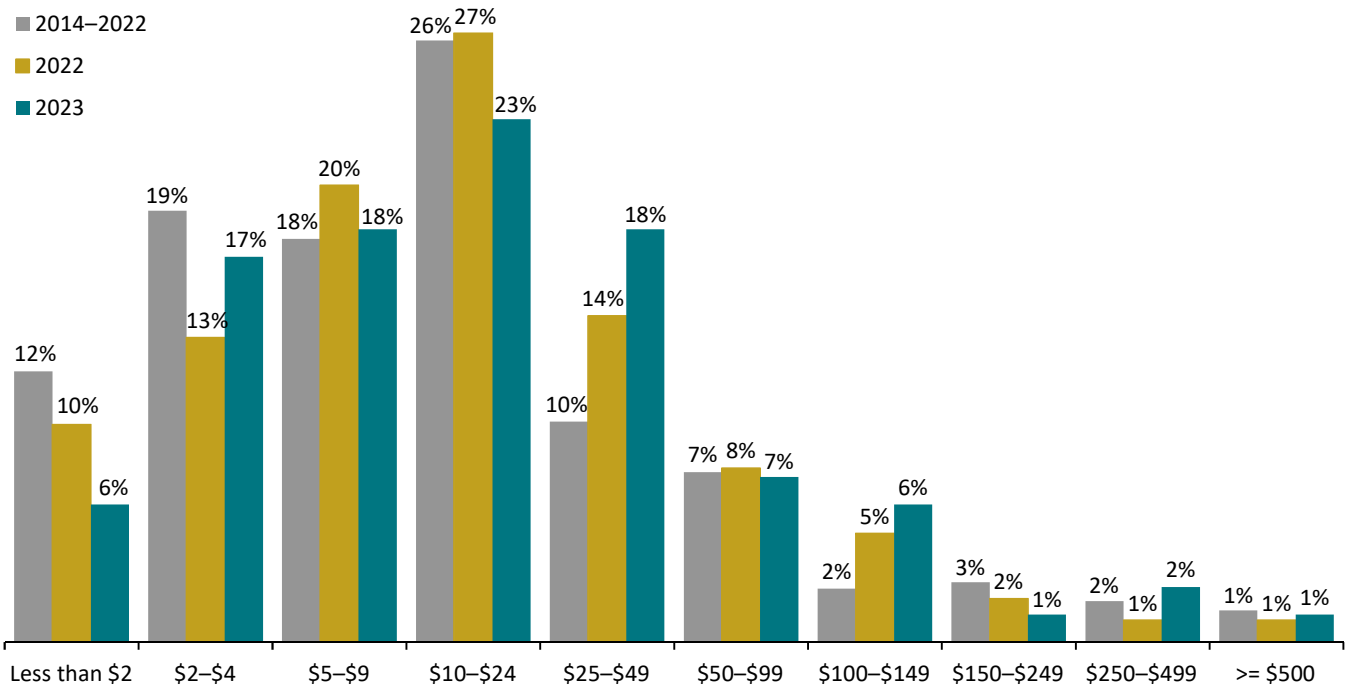
- The median settlement amount in 2023 was $15 million, an 11% increase from 2022 and 44% higher than the 2014–2022 median ($10.4 million). Median values provide the midpoint in a series of observations and are less affected than averages by outlier data.
- The average settlement amount in 2023 was $47.3 million, a 25% increase from 2022. (*See Appendix 1 for an analysis of settlements by percentiles*.)
- In 2023, 6% of cases settled for less than $2 million, the lowest percentage since 2013.

The median settlement amount in 2023 reached the highest level since 2010.

- The percentage of settlement amounts greater than $25 million (34%) was the highest since 2012, driven in part by the continued increase in settlement amounts in the $25 million to $50 million range.
- Issuers that have been delisted from a major exchange and/or declared bankruptcy prior to settlement are generally associated with lower settlement amounts. The number of such issuers declined from 10% in 2022 to a new all-time low of 7% in 2023, contributing to the higher overall median settlement amount in 2023.[3]

Figure 3: Distribution of Settlements
2014–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. Percentages may not sum to 100% due to rounding.

Type of Claim

Rule 10b-5 Claims and "Simplified Tiered Damages"

"Simplified tiered damages" uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.[4]

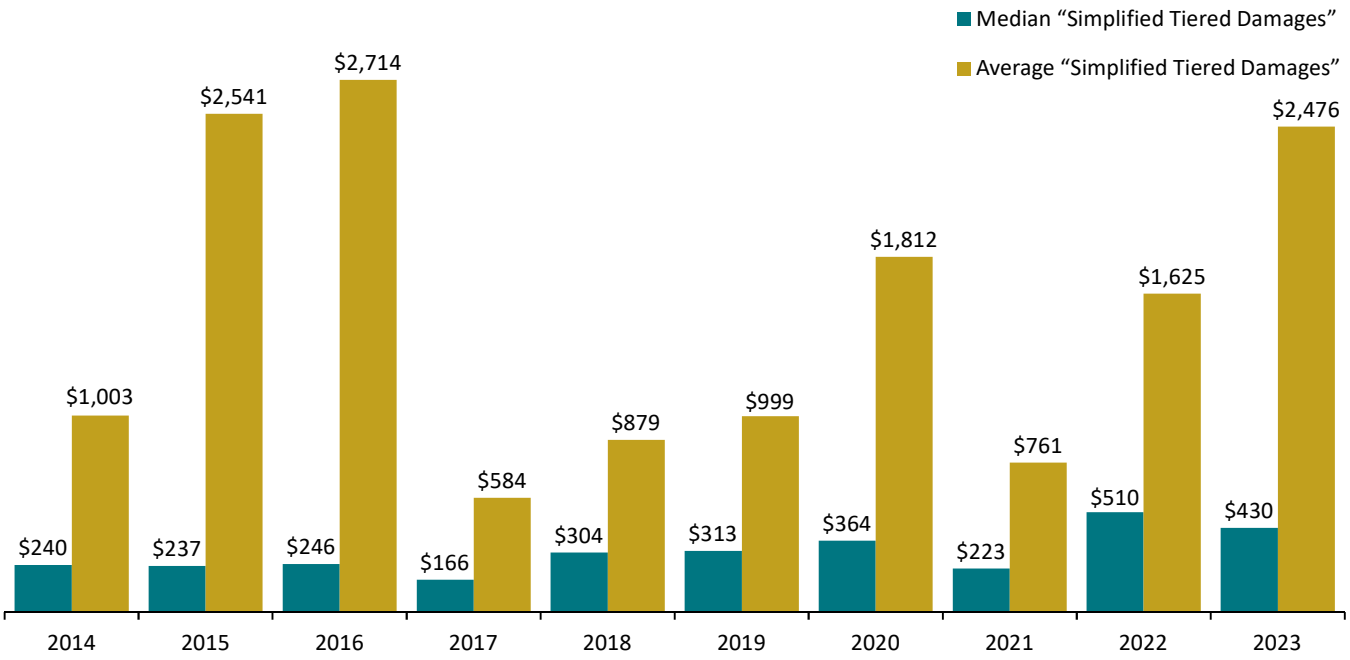
Cornerstone Research's analysis finds this measure to be the most important factor in estimating settlement amounts.[5] However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

Median "simplified tiered damages" remained at elevated levels in 2023.

- In 2023, the average "simplified tiered damages" was nearly six times as large as the median, the largest difference since 2016. This difference was primarily driven by seven cases with "simplified tiered damages" exceeding $5 billion.
- Higher "simplified tiered damages" are typically associated with larger issuer defendants. Consistent with the elevated levels of "simplified tiered damages," the median total assets of issuer defendants among settled cases in 2023 was $3.1 billion—154% higher than the prior nine-year median and higher than any other post–Reform Act year.
- Higher "simplified tiered damages" are also generally associated with larger Maximum Dollar Loss (MDL).[6] In 2023, the median MDL fell only slightly from the historical high in 2022. *(See Appendix 7 for additional information on median and average MDL.)*

Figure 4: Median and Average "Simplified Tiered Damages" in Rule 10b-5 Cases
2014–2023

(Dollars in millions)

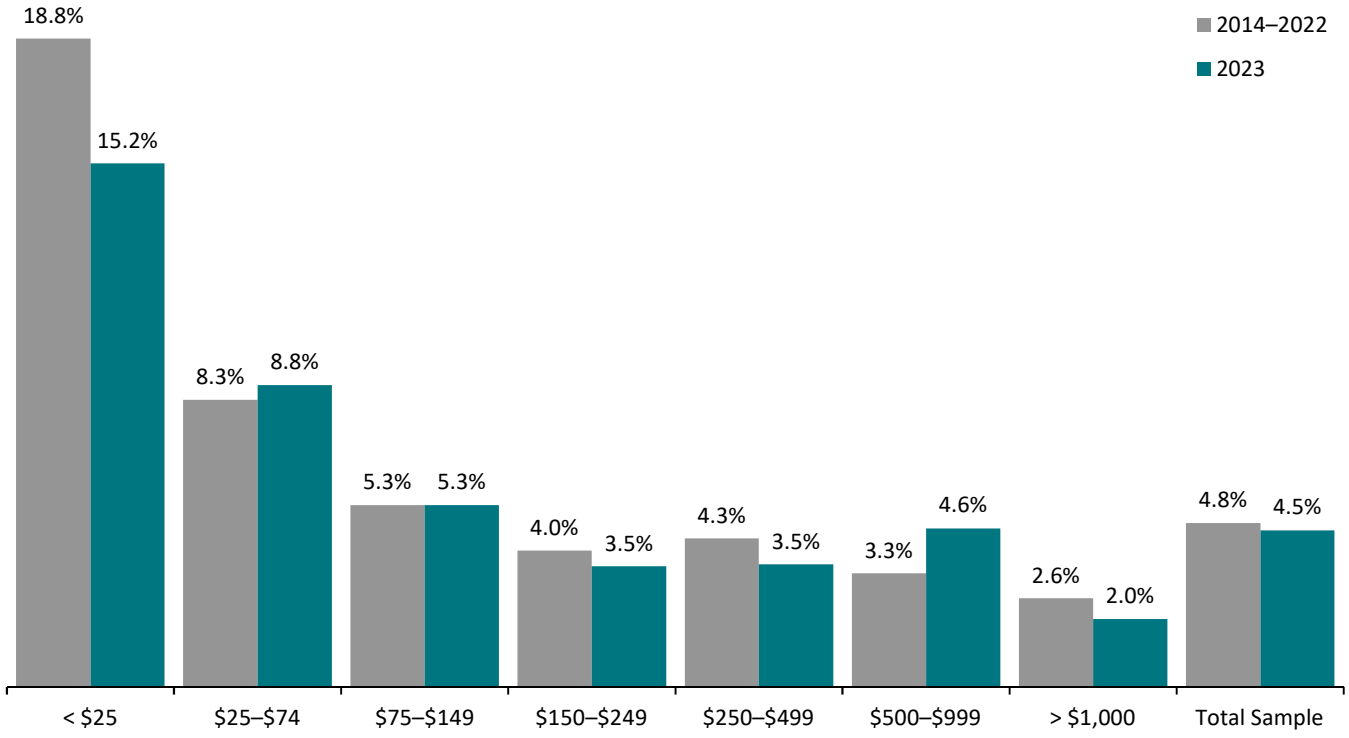


Note: "Simplified tiered damages" are adjusted for inflation based on class period end dates and are estimated for common stock only; 2023 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

- Larger cases, as measured by "simplified tiered damages," typically settle for a smaller percentage of damages.
- In 2023, the overall median settlement as a percentage of "simplified tiered damages" of 4.5% increased 27% from 2022, but was in-line with the prior nine-year average percentage. *(See Appendix 5 for additional information on median and average settlement as a percentage of "simplified tiered damages.")*
- The median settlement as a percentage of "simplified tiered damages" of 4.6% for cases with "simplified tiered damages" from $500 million to $1 billion reached a five-year high in 2023.

Figure 5: Median Settlement as a Percentage of "Simplified Tiered Damages" by Damages Ranges in Rule 10b-5 Cases 2014–2023

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

Plaintiff-Estimated Damages

In their motions for settlement approval, plaintiffs typically report an estimate of aggregate damages ("plaintiff-estimated damages").[7]

As explained in Cornerstone Research's *Approved Claims Rates in Securities Class Actions* (2020), "plaintiff-estimated damages" are often represented as plaintiffs' "best-case scenario" or the "maximum potential recovery" calculated by plaintiffs. However, the authors highlight a "selection bias" present in these data due to potential plaintiff counsel incentives to report "the lower end of the range of estimated total aggregate damages" to be able "to demonstrate to the court a high settlement amount relative to potential recovery." To the extent such incentives exist, their impact may vary across cases. Detailed information on plaintiffs' methodology to determine the reported amount is not disclosed. Hence, it is not possible to determine from the settlement documents the degree to which the methodologies employed are consistent across cases.

With the significant caveats above, "plaintiff-estimated damages" represent an additional measure of potential shareholder losses that may be used alongside "simplified tiered damages" in conjunction with settlement analyses.

'33 Act Claims and "Simplified Statutory Damages"

For Securities Act of 1933 ('33 Act) claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—potential shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages."[8]

- There were 10 settlements for cases with only '33 Act claims in 2023, with the majority of those cases filed in federal court (7) as opposed to state court (3).[9]
- In 2023, the percentage of cases with an underwriter defendant was 70%, down from the prior nine-year average of 88%.
- The median length of time from case filing to settlement hearing date for '33 Act claim cases was greater than four years—the longest observed duration in any post–Reform Act year for this type of case.

In 2023, the median settlement amount for cases with only '33 Act claims was $13.5 million, an 85% increase from 2022.

Figure 6: Settlements by Nature of Claims
2014–2023

(Dollars in millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	84	$9.9	$158.1	7.5%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	123	$14.7	$307.4	6.6%
Rule 10b-5 Only	596	$10.3	$291.7	4.5%

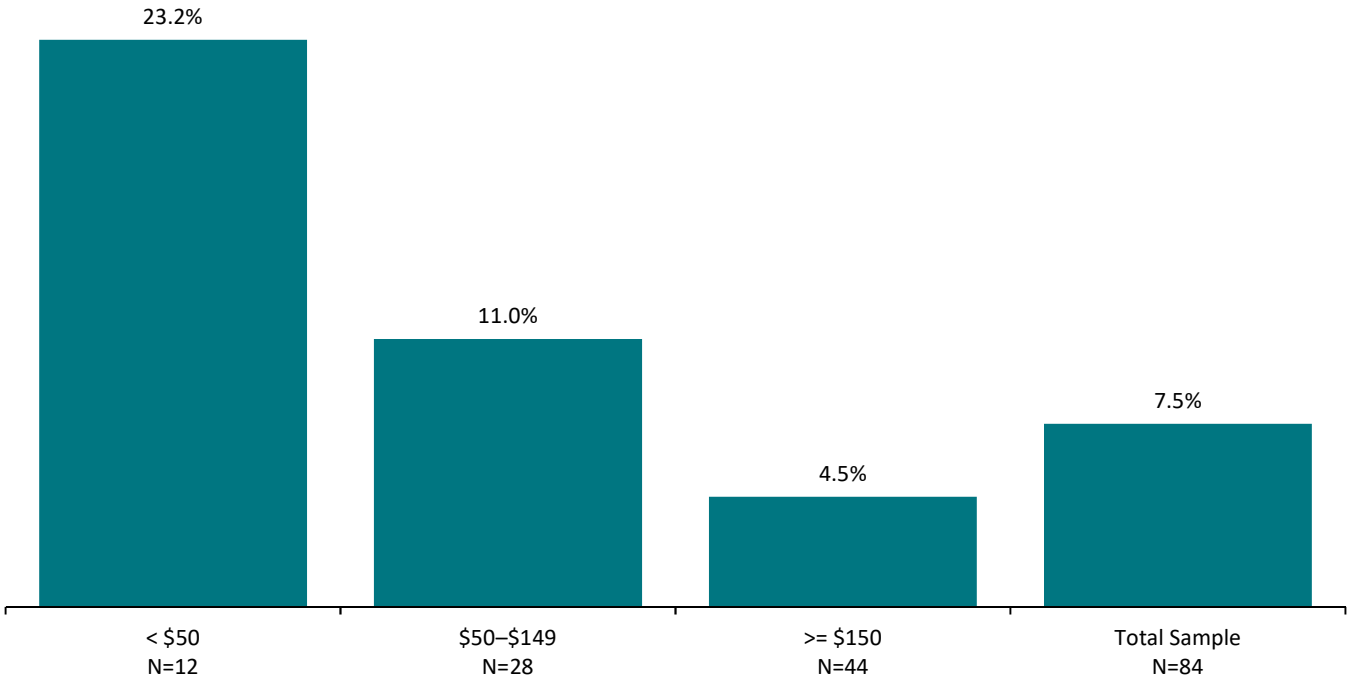
Note: Settlement dollars and damages are adjusted for inflation; 2023 dollar equivalent figures are presented.

- Over 2014–2023, the median size of issuer defendants (measured by total assets) was 40% smaller for cases with only ’33 Act claims relative to those that also included Rule 10b-5 claims.
- The smaller size of issuer defendants in cases with only ’33 Act claims is consistent with most of these cases involving initial public offerings (IPOs). From 2014 through 2023, 80% of all cases with only ’33 Act claims have involved IPOs.
- In 2023, however, the median total assets for settled cases with only ’33 Act claims ($2.5 billion) was over four times as large as the median total assets for such cases in 2014–2022 ($580 million).

The median “simplified statutory damages” in 2023 increased by 115% from the 2022 median and represents the third highest since 1996.

Figure 7: Median Settlement as a Percentage of “Simplified Statutory Damages” by Damages Ranges in ’33 Act Claim Cases 2014–2023

(Dollars in millions)



Jurisdictions of Settlements of ’33 Act Claim Cases

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
State Court	0	2	4	5	4	4	7	6	6	3
Federal Court	2	2	6	3	4	5	1	10	3	7

Note: “N” refers to the number of cases. This analysis excludes cases alleging Rule 10b-5 claims.

Analysis of Settlement Characteristics

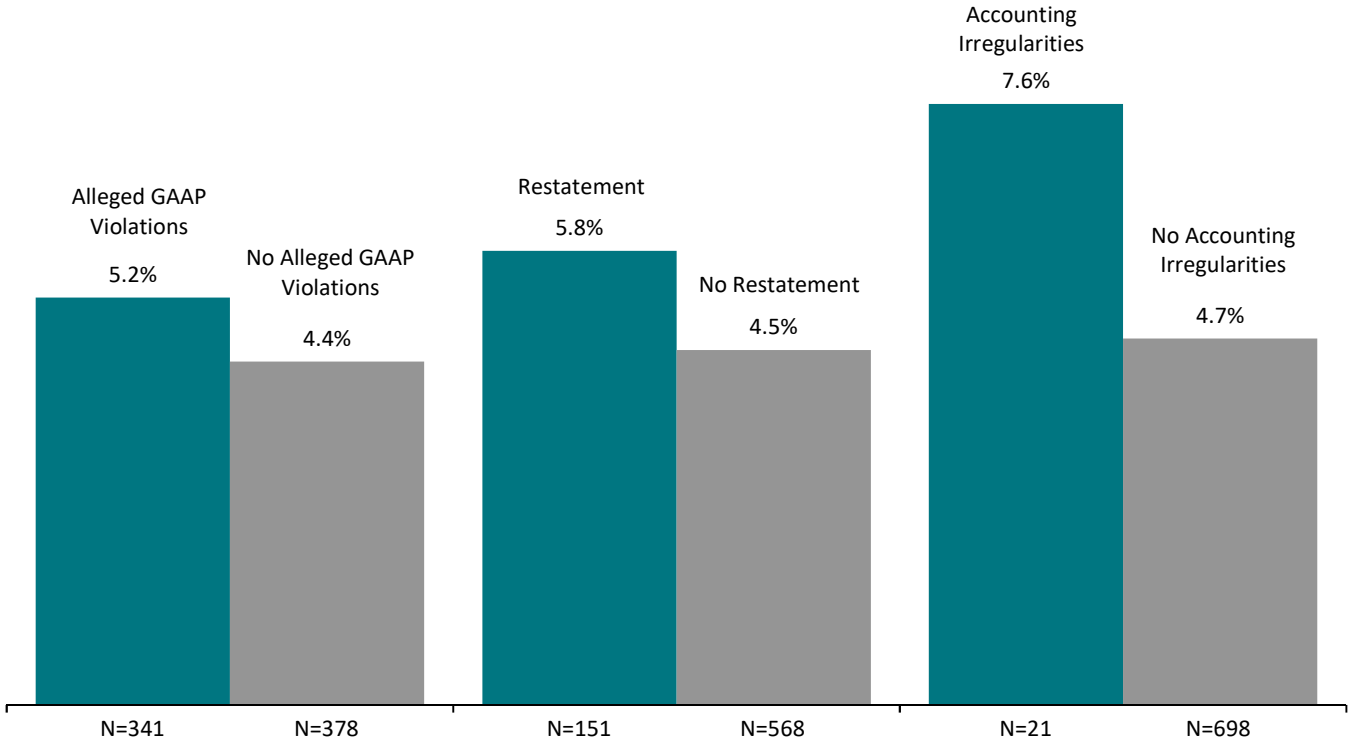
GAAP Violations

This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.[10] For further details regarding settlements of accounting cases, see Cornerstone Research's annual report on *Accounting Class Action Filings and Settlements*.[11]

- The percentage of settled cases in 2023 alleging GAAP violations (37%) remained well below the prior nine-year average (49%).
- Contributing to the low number of GAAP cases settled in 2023 were continued low levels of cases involving financial statement restatements and accounting irregularities. In particular, 14% of settled cases in 2023 involved a restatement of financial statements, compared to 22% for the prior nine years. Only 1% of settled cases in 2023 involved accounting irregularities.
- Auditor codefendants were involved in only 2% of settled cases, consistent with the past few years but substantially lower than the average from 2014 to 2022.

In 2023, the median settlement as a percentage of "simplified tiered damages" for cases with alleged GAAP violations increased nearly 25% from 2022.

Figure 8: Median Settlement as a Percentage of "Simplified Tiered Damages" and Allegations of GAAP Violations 2014–2023



Note: "N" refers to the number of cases. This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

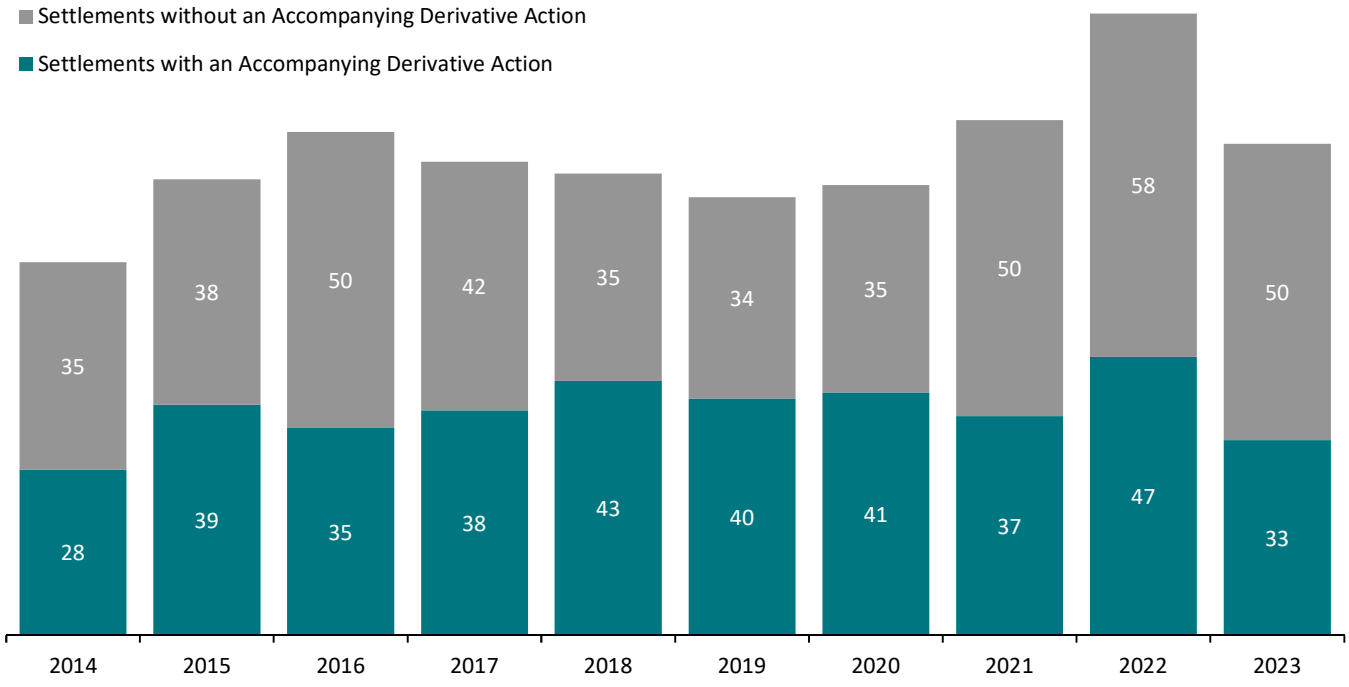
Derivative Actions

- Securities class actions often involve accompanying (or parallel) derivative actions with similar claims, and such cases have historically settled for higher amounts than securities class actions without accompanying derivative matters.[12]
- The percentage of cases involving accompanying derivative actions in 2023 (40%) was the lowest since 2011, in part driven by a reduction in the number of cases filed in Delaware (13) compared to the prior four-year average (17).
- For cases settled during 2019–2023, 40% of parallel derivative suits were filed in Delaware. California and New York were the next most common venues, representing 19% and 17% of such settlements, respectively.

In 2023, the median settlement amount for cases with an accompanying derivative action was $21 million, over 40% higher than in 2022.

- It is commonly understood that most parallel derivative actions do not settle for monetary amounts (other than plaintiffs' attorney fees). However, the likelihood of a monetary settlement among parallel derivative actions is higher when the securities class action settlement is large, as shown in Cornerstone Research's *Parallel Derivative Action Settlement Outcomes*.[13]

Figure 9: Frequency of Derivative Actions
2014–2023



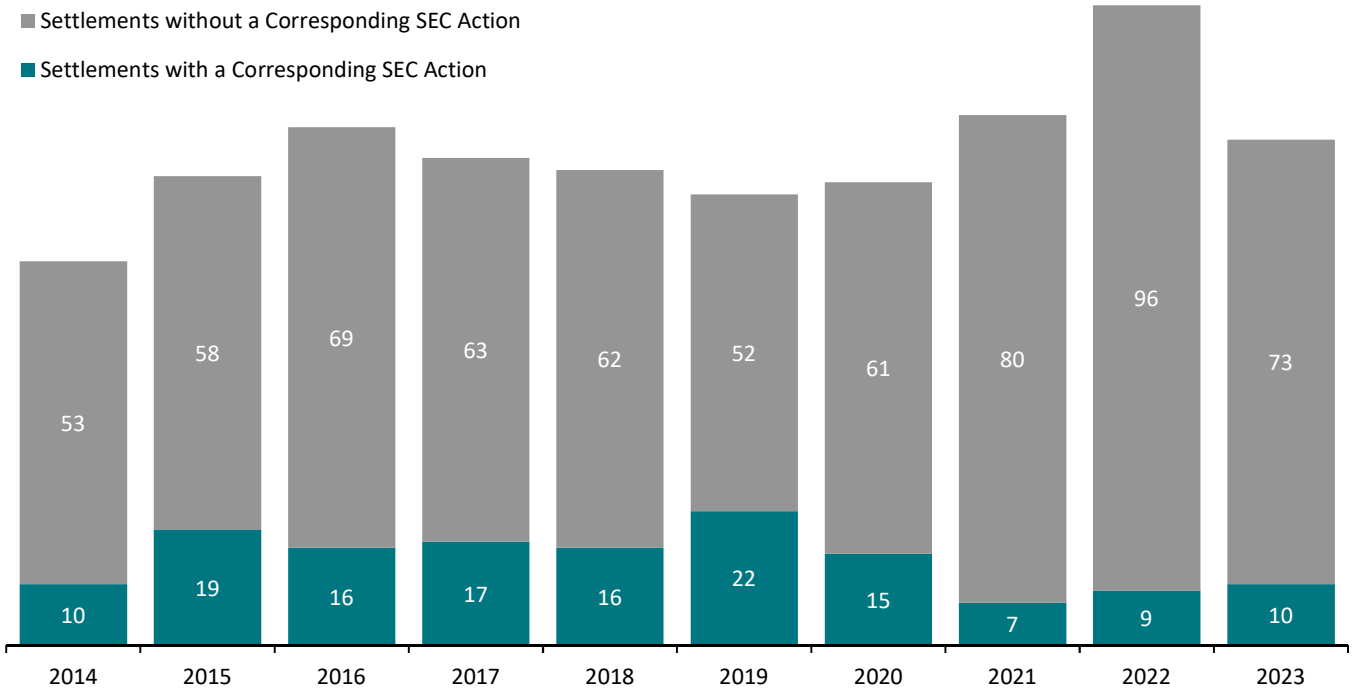
Corresponding SEC Actions

- The percentage of settled cases in 2023 involving a corresponding SEC action was 12%. This represents a slight rebound from 2021 and 2022, when this percentage was less than 10%, but is still well below the prior nine-year average of 19%.

Over the past 10 years, nearly 75% of settled cases involving SEC actions also involved a restatement of financial statements or alleged GAAP violations.

- Historically, cases with a corresponding SEC action have typically been associated with substantially higher settlement amounts.[14] However, this pattern did not hold in 2023 when, for the third time in the past 10 years, the median settlement amount for cases with a corresponding SEC action was less than that for cases without such an action.
- Among 2023 settled cases that involved a corresponding SEC action, 70% also had an institutional investor as a lead plaintiff, up from 33% in 2022.

Figure 10: Frequency of SEC Actions
2014–2023



Institutional Investors

As discussed in prior reports, increasing institutional investor participation as lead plaintiff in securities litigation was a focus of the Reform Act.[15] Indeed, in years following passage of the Reform Act, institutional investor involvement as lead plaintiffs did increase, particularly in cases with higher "simplified tiered damages."

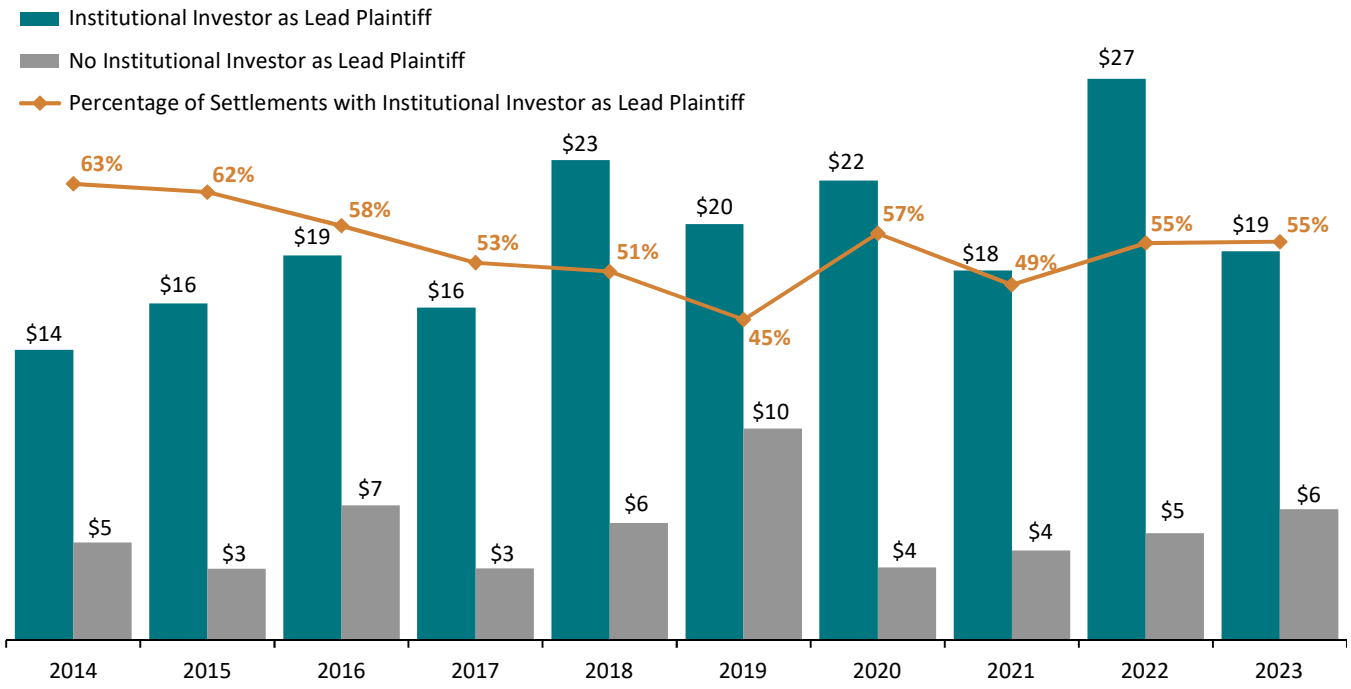
- In 2023, for cases involving an institutional investor as lead plaintiff, median "simplified tiered damages" and median total assets were two times and nine times higher, respectively, than the median values for cases without an institutional investor as a lead plaintiff.

All nine mega settlements in 2023 included an institutional investor as lead plaintiff.

- In 2023, a public pension plan served as lead plaintiff in nearly two-thirds of cases with an institutional lead plaintiff.
- Institutional investor participation as lead plaintiff continues to be associated with particular plaintiff counsel. For example, in 2023 an institutional investor served as a lead plaintiff in over 88% of settled cases in which Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and/or Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") served as lead or co-lead plaintiff counsel. In contrast, institutional investors served as lead plaintiff in 21% of cases in which The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP served as lead or co-lead plaintiff counsel.

Figure 11: Median Settlement Amounts and Institutional Investors
2014–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

Time to Settlement and Case Complexity

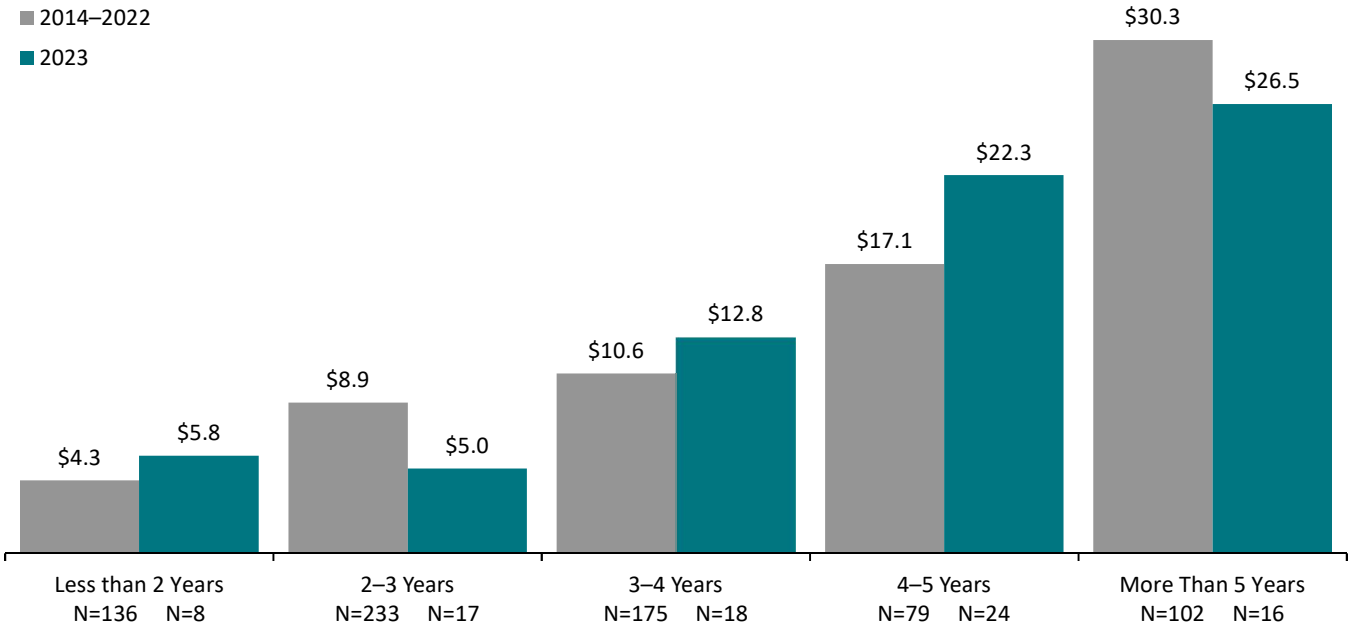
- Overall, less than one-third of cases settled in 2023 settled within three years of filing.
- Cases involving an institutional lead plaintiff continued to take longer to settle. In particular, cases settled in 2023 with an institutional lead plaintiff had a median time to settle of over 4.2 years compared to 3.4 years for cases without an institutional lead plaintiff.
- In 2023, the median time to settle for cases with GAAP allegations was almost a year longer than the median for cases without GAAP allegations.

The median time from filing to settlement hearing date in 2023 (3.7 years) was up nearly 17% from 2022.

- Historically, cases with The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP as lead or co-lead plaintiff counsel settled within three years of case filing. However, cases settled in 2023 with these firms acting as plaintiff counsel collectively took 3.9 years to settlement, a level reached in only one other year (2009). These three law firms were lead or co-lead plaintiff counsel in approximately 30% of cases in 2023.
- The presence of Robbins Geller as lead or co-lead plaintiff counsel is associated with a longer duration between filing and settlement. Cases settled in 2023 with Robbins Geller acting as lead or co-lead plaintiff counsel (28% of settled cases) had a median time to settle of 4.1 years compared to 3.5 years for cases in which the law firm was not involved.[16]
- The number of docket entries can be viewed as a proxy for the time and effort expended by plaintiff counsel and/or case complexity. Median docket entries in 2023 (142) increased only slightly from 2022 (138).

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date
2014–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. "N" refers to the number of cases.

Case Stage at the Time of Settlement

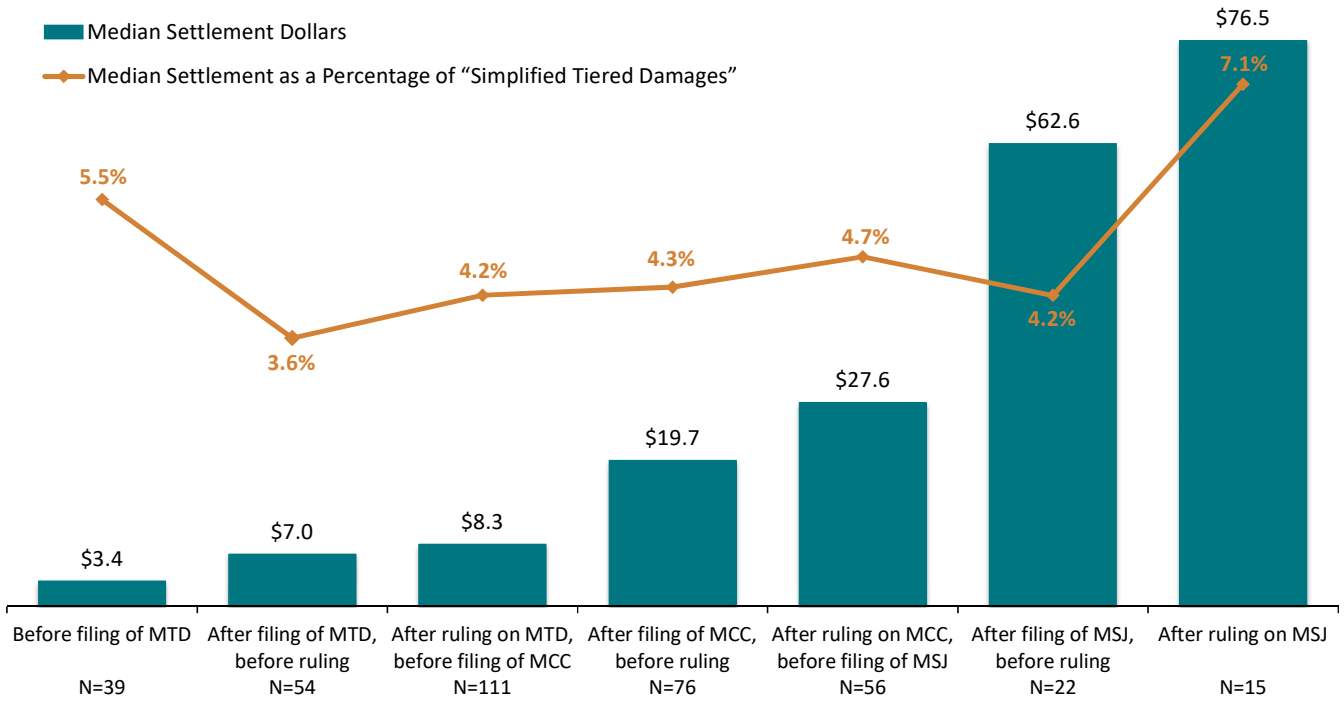
Using data obtained through collaboration with Stanford Securities Litigation Analytics (SSLA), this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

- Cases settling at later stages continue to be larger in terms of total assets and "simplified tiered damages."
- For example, both median total assets and median "simplified tiered damages" for cases that settled in 2023 after the ruling on a motion for class certification were over two times the respective medians for cases that settled in 2023 prior to such a motion being ruled on.
- In the five-year period from 2019 through 2023, over 90% of cases settled prior to the filing of a motion for summary judgment.
- In 2023, cases settling at later stages continued to include an institutional lead plaintiff at a higher percentage. Specifically, 68% of cases that settled after the filing of a motion for class certification involved an institutional lead plaintiff compared to 41% of cases that settled prior to the filing of such a motion.

In 2023, the percentage of cases settling prior to the filing of a motion to dismiss continued to decline—from 14% of cases in 2019 to 7% of cases in 2023.

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement
2019–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. "N" refers to the number of cases. MTD refers to "motion to dismiss," MCC refers to "motion for class certification," and MSJ refers to "motion for summary judgment." This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Cornerstone Research's Settlement Analysis

This research applies regression analysis to examine the relations between settlement outcomes and certain securities case characteristics. Regression analysis is employed to better understand the factors that are important for estimating what cases might settle for, given the characteristics of a particular securities class action.

Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2023, important determinants of settlement amounts include the following:

- "Simplified tiered damages"
- Maximum Dollar Loss (MDL)—the dollar-value change in the defendant issuer's market capitalization from its class period peak to the first trading day without inflation
- The most recently reported total assets prior to the settlement hearing date for the defendant issuer
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was an SEC action with allegations similar to those included in the underlying class action complaint, as evidenced by a litigation release or an administrative proceeding against the issuer, officers, directors, or other defendants
- Whether there were criminal charges against the issuer, officers, directors, or other defendants with allegations similar to those included in the underlying class action complaint
- Whether there was a derivative action with allegations similar to those included in the underlying class action complaint
- Whether, in addition to Rule 10b-5 claims, Section 11 claims were alleged and were still active prior to settlement
- Whether the issuer has been delisted from a major exchange and/or has declared bankruptcy (i.e., whether the issuer was "distressed")
- Whether an institutional investor acted as lead plaintiff
- Whether securities other than common stock/ADR/ADS were included in the alleged class

Cornerstone Research analyses show that settlements were higher when "simplified tiered damages," MDL, issuer defendant asset size, or the number of docket entries was larger, or when Section 11 claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, an institutional investor lead plaintiff, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 75% of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains only cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes nearly 2,200 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2023. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[17]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[18] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[19]

Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Stanford Securities Litigation Analytics (SSLA), Securities Class Action Clearinghouse (SCAC), and public press.

Endnotes

1 Reported dollar figures and corresponding comparisons are adjusted for inflation; 2023 dollar equivalent figures are presented in this report.

2 "Simplified tiered damages" are calculated for cases that settled in 2006 or later, following the U.S. Supreme Court's 2005 landmark decision in *Dura Pharmaceuticals Inc. v. Broudo*, 544 U.S. 336. "Simplified tiered damages" is based on the stock-price declines associated with the alleged corrective disclosure dates that are described in the settlement plan of allocation.

3 Comparison to "all-time" refers to the inception of Cornerstone Research's database of post–Reform Act settlements beginning in 1996.

4 The "simplified tiered damages" approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the "true value" of the stock during the alleged class period (or "value line"). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant's common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement benchmarking may differ substantially from damages estimates developed in conjunction with case-specific economic analysis.

5 Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).

6 MDL is the dollar-value change in the defendant issuer's market capitalization from its class period peak to the first trading day without inflation.

7 Catherine J. Galley, Nicholas D. Yavorsky, Filipe Lacerda, and Chady Gemayel, *Approved Claims Rates in Securities Class Actions: Evidence from 2015–2018 Rule 10b-5 Settlements*, Cornerstone Research (2020). Data on "plaintiff-estimated damages" is made available to Cornerstone Research through collaboration with Stanford Securities Litigation Analytics (SSLA). SSLA tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice (DOJ). The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at https://sla.law.stanford.edu/.

8 The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the "value" of the security on the first complaint filing date. For purposes of "simplified statutory damages," the "value" of the security on the first complaint filing date is assumed to be the security's closing price on this date. Similar to "simplified tiered damages," the estimation of "simplified statutory damages" makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.

9 As noted in prior reports, the March 2018 U.S. Supreme Court decision in *Cyan Inc. v. Beaver County Employees Retirement Fund* (*Cyan*) held that '33 Act claim securities class actions could be brought in state court. While '33 Act claim cases had often been brought in state courts before *Cyan*, filing rates in state courts increased substantially following this ruling. This trend reversed, however, following the March 2020 Delaware Supreme Court decision in *Salzberg v. Sciabacucchi* upholding the validity of federal forum-selection provisions in corporate charters. See, for example, *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).

10 The two sub-categories of accounting issues analyzed in Figure 8 of this report are (1) restatements—cases involving a restatement (or announcement of a restatement) of financial statements, and (2) accounting irregularities.

11 *Accounting Class Action Filings and Settlements—2023 Review and Analysis*, Cornerstone Research, forthcoming in spring 2024.

12 To be considered an accompanying (or parallel) derivative action, the derivative action must have underlying allegations that are similar or related to the underlying allegations of the securities class action and either be active or settling at the same time as the securities class action.

13 *Parallel Derivative Action Settlement Outcomes*, Cornerstone Research (2022).

14 As noted in prior reports, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.

15 See, for example, *Securities Class Action Settlements—2006 Review and Analysis*, Cornerstone Research (2007); Michael A. Perino, "Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA's Lead Plaintiff Provision," St. John's Legal Studies Research Paper No. 12-0021 (2013).

16 Although Robbins Geller is associated with a longer duration to settlement, its presence as lead or co-lead plaintiff counsel is not associated with significantly higher settlements as a percentage of "simplified tiered damages."

17 Available on a subscription basis. For further details see https://www.issgovernance.com/securities-class-action-services/.

18 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.

19 This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in millions)

Year	*Average*	10th	25th	*Median*	75th	90th
2014	*$23.5*	$2.2	$3.7	*$7.7*	$17.0	$64.4
2015	*$50.6*	$1.7	$2.8	*$8.4*	$20.9	$120.9
2016	*$89.6*	$2.4	$5.3	*$10.9*	$41.9	$185.4
2017	*$22.9*	$1.9	$3.2	*$6.5*	$19.0	$44.0
2018	*$78.7*	$1.8	$4.4	*$13.7*	$30.0	$59.6
2019	*$33.6*	$1.7	$6.7	*$13.1*	$23.8	$59.6
2020	*$64.9*	$1.6	$3.8	*$11.5*	$23.8	$62.8
2021	*$23.1*	$1.9	$3.5	*$9.3*	$20.1	$65.9
2022	*$37.9*	$2.1	$5.2	*$13.5*	$36.4	$74.8
2023	*$47.3*	$3.0	$5.0	*$15.0*	$33.3	$101.0

Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

Appendix 2: Settlements by Select Industry Sectors
2014–2023

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Financial	91	$17.8	$313.3	5.3%
Technology	106	$9.4	$318.2	4.3%
Pharmaceuticals	122	$8.5	$242.5	3.9%
Telecommunication	28	$11.4	$381.0	4.4%
Retail	51	$15.2	$350.4	4.6%
Healthcare	21	$10.1	$240.4	6.0%

Note: Settlement dollars and "simplified tiered damages" are adjusted for inflation; 2023 dollar equivalent figures are presented. "Simplified tiered damages" are calculated only for cases involving Rule 10b-5 claims (whether alone or in addition to other claims).

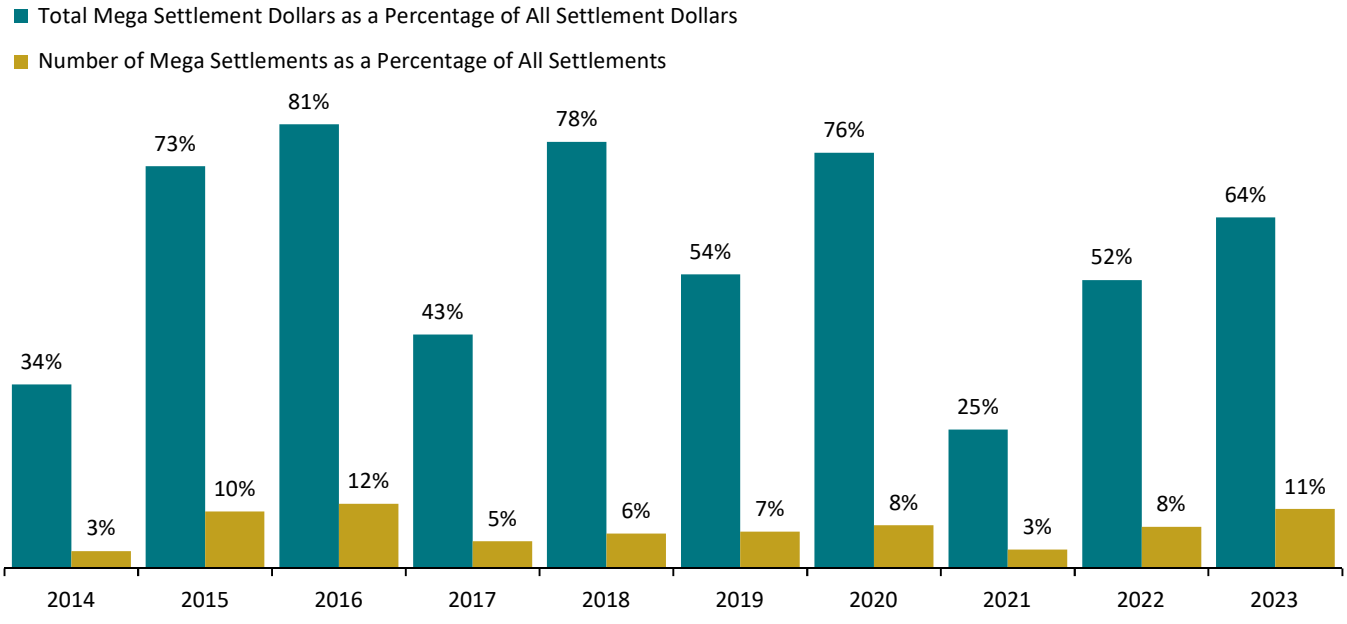
Appendix 3: Settlements by Federal Circuit Court
2014–2023

(Dollars in millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of "Simplified Tiered Damages"
First	20	$14.1	2.8%
Second	212	$8.9	4.9%
Third	85	$7.3	4.9%
Fourth	23	$24.5	3.9%
Fifth	38	$11.7	4.7%
Sixth	35	$15.8	6.7%
Seventh	40	$18.0	3.7%
Eighth	14	$48.3	4.6%
Ninth	190	$9.0	4.4%
Tenth	19	$12.4	5.3%
Eleventh	36	$13.7	4.7%
DC	4	$27.9	2.2%

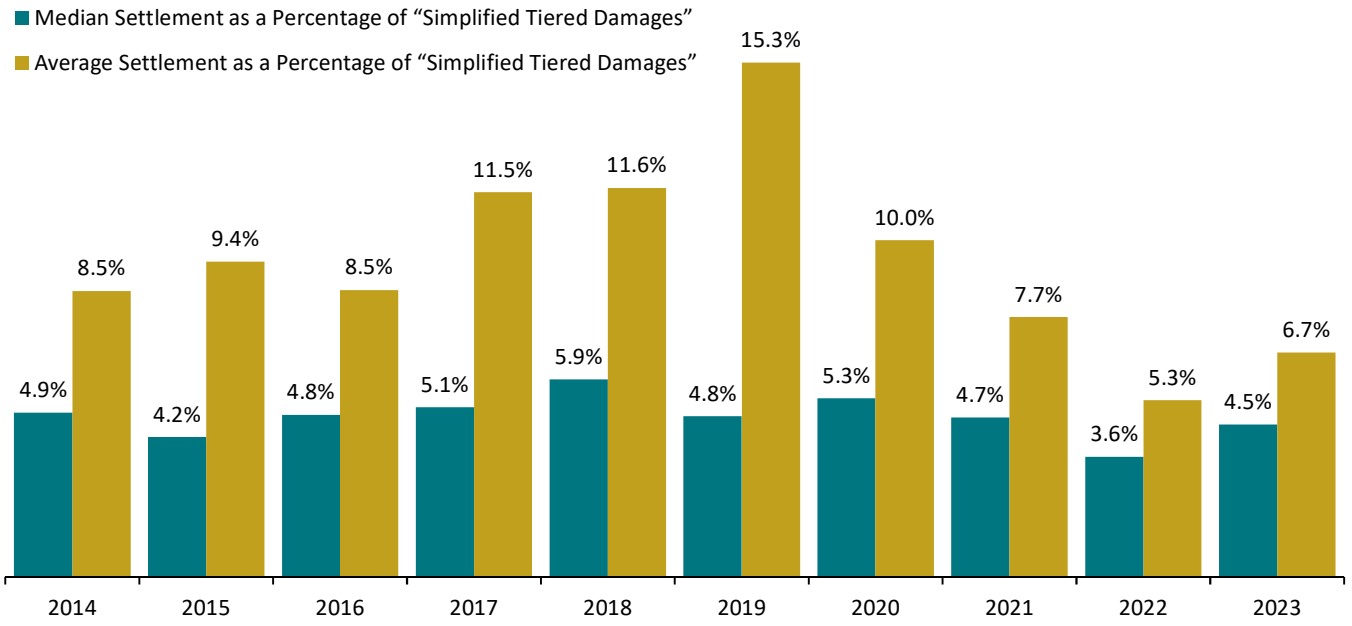
Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. Settlements as a percentage of "simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 4: Mega Settlements
2014–2023



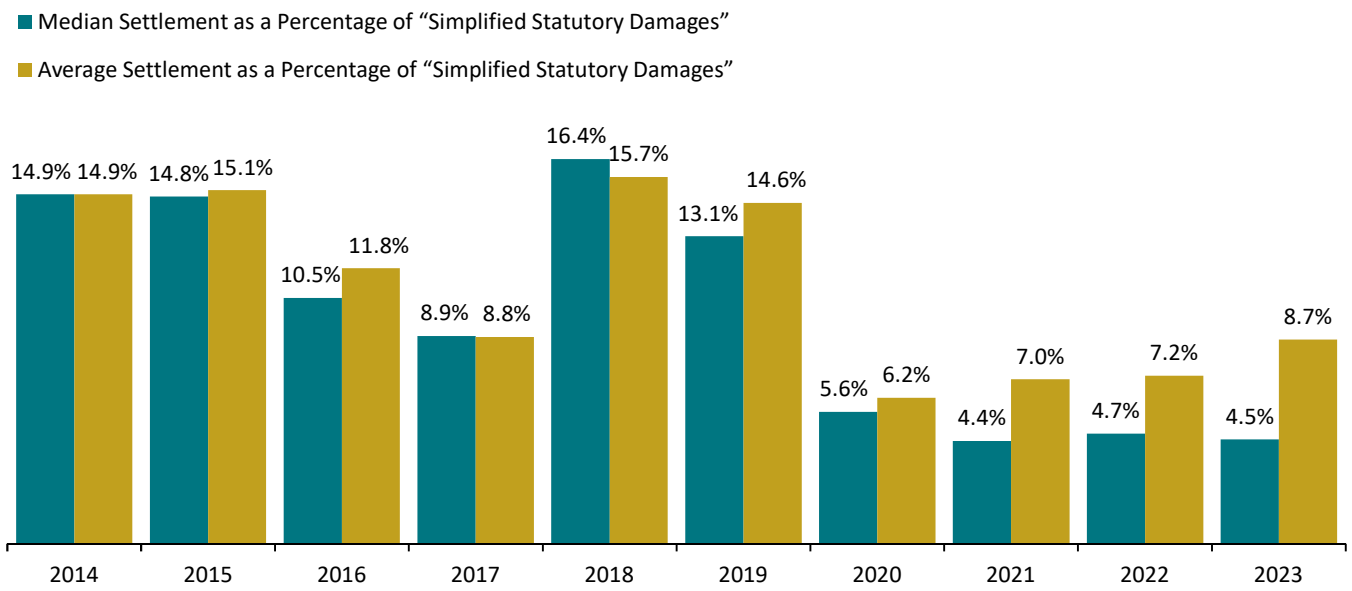
Note: Mega settlements are defined as total settlement funds equal to or greater than $100 million.

Appendix 5: Median and Average Settlements as a Percentage of "Simplified Tiered Damages"
2014–2023



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

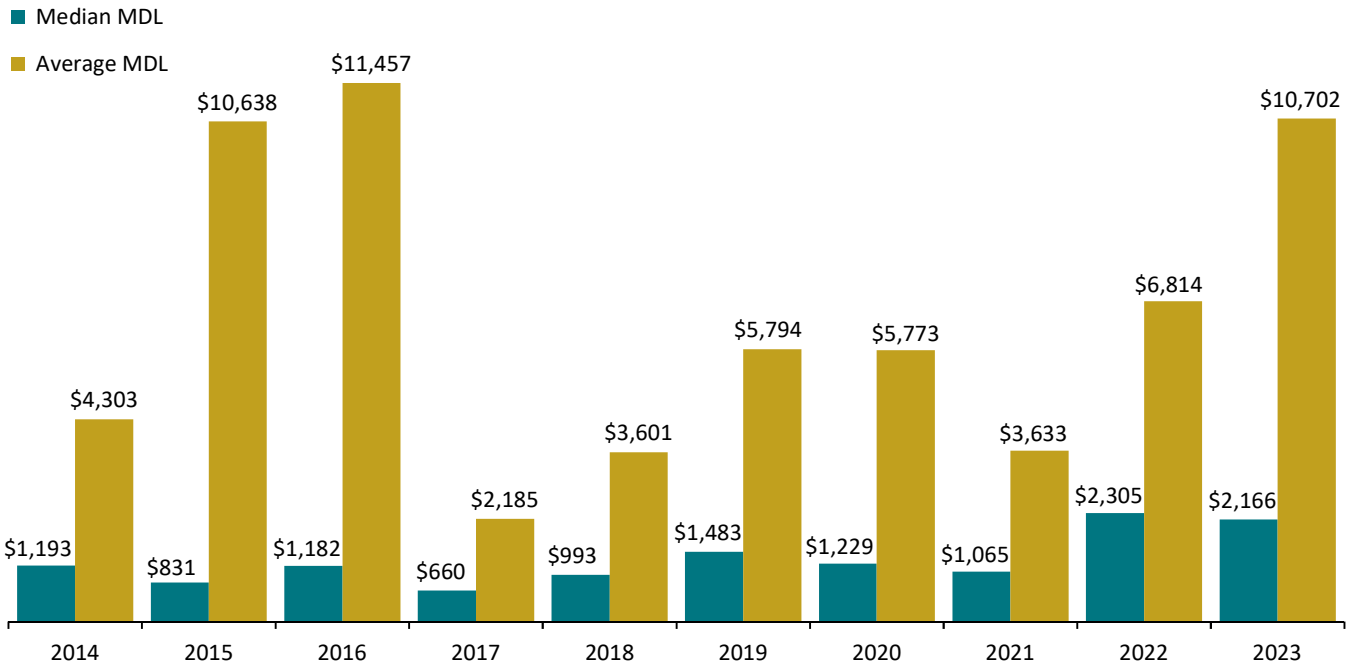
Appendix 6: Median and Average Settlements as a Percentage of "Simplified Statutory Damages"
2014–2023



Note: "Simplified statutory damages" are calculated only for cases alleging Section 11 ('33 Act) claims and no Rule 10b-5 claims.

Appendix 7: Median and Average Maximum Dollar Loss (MDL)
2014–2023

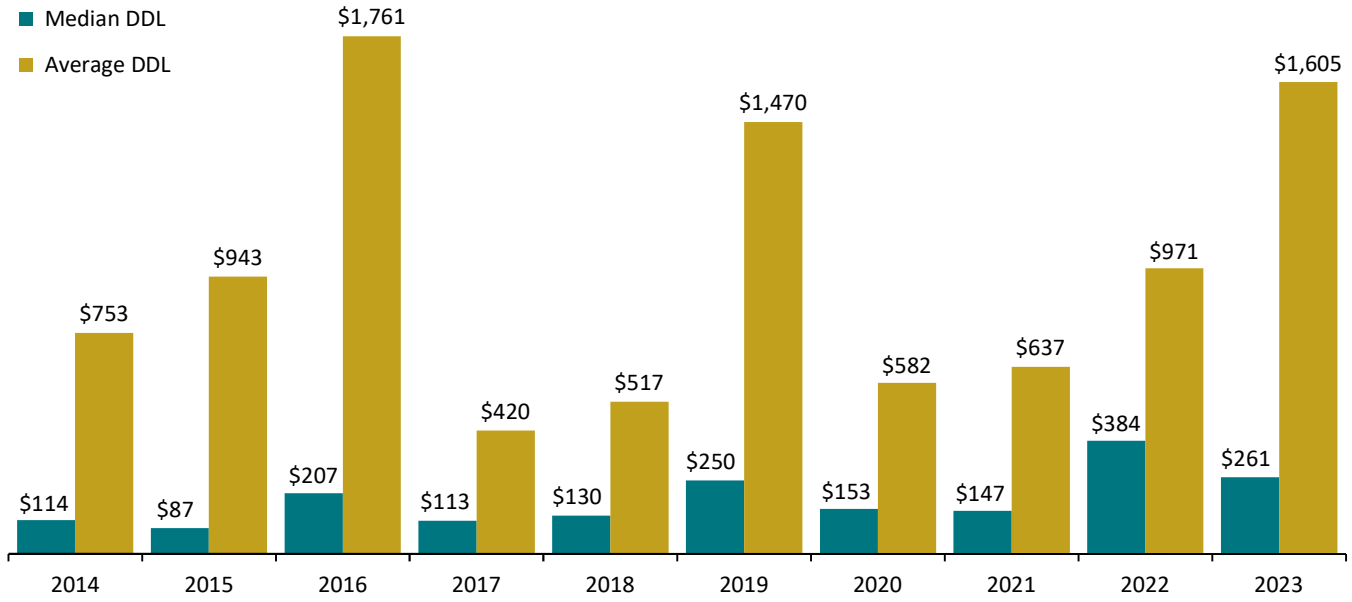
(Dollars in millions)



Note: MDL is adjusted for inflation based on class period end dates; 2023 dollar equivalents are presented. MDL is the dollar-value change in the defendant issuer's market capitalization from its class period peak to the first trading day without inflation. This analysis excludes cases alleging '33 Act claims only.

Appendix 8: Median and Average Disclosure Dollar Loss (DDL)
2014–2023

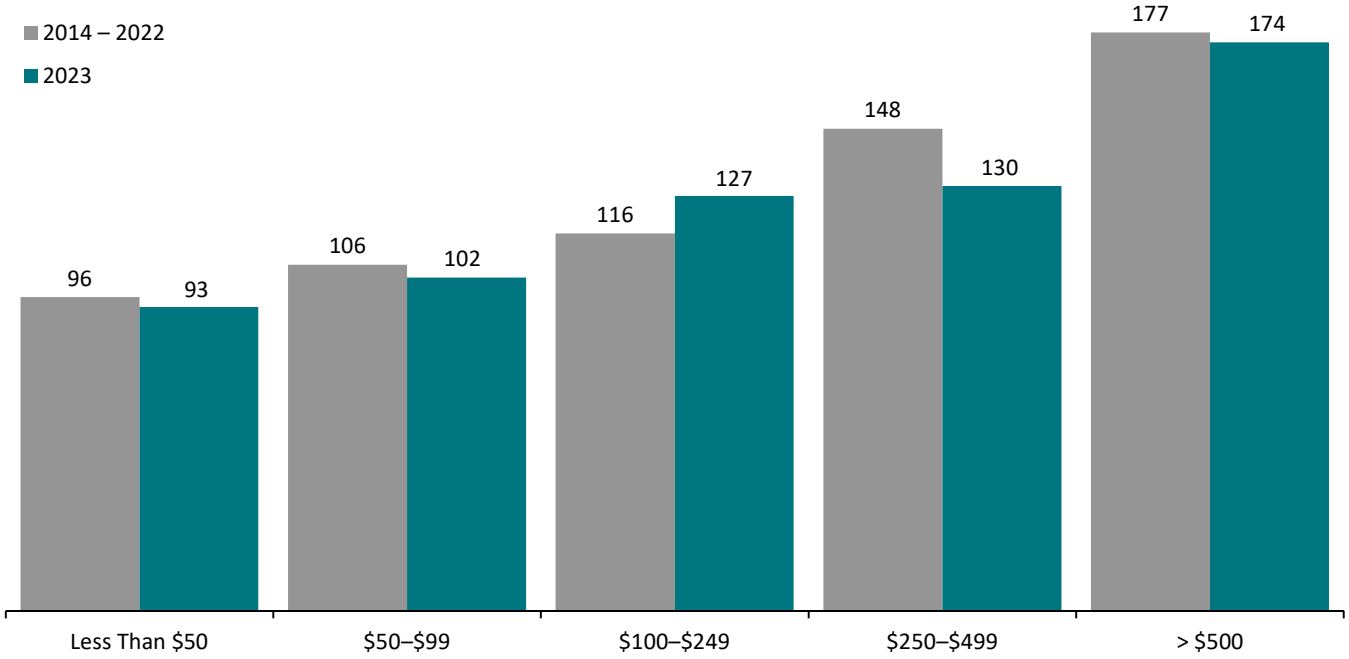
(Dollars in millions)



Note: DDL is adjusted for inflation based on class period end dates; 2023 dollar equivalents are presented. DDL is the dollar-value change in the defendant firm's market capitalization between the end of the class period to the first trading day without inflation. This analysis excludes cases alleging '33 Act claims only.

Appendix 9: Median Docket Entries by "Simplified Tiered Damages" Range
2014–2023

(Dollars in millions)



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

About the Authors

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Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues; mergers and acquisitions (M&A) and firm valuation; and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published notable academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

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Laura Simmons is a senior advisor with Cornerstone Research. She has more than 25 years of experience in economic consulting. Dr. Simmons has focused on damages and liability issues in securities class actions, as well as litigation involving the Employee Retirement Income Security Act (ERISA). She has also managed cases involving financial accounting, valuation, and corporate governance issues. She has served as a testifying expert in litigation involving accounting analyses, securities case damages, ERISA matters, and research on securities lawsuits.

Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, including research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors gratefully acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update. The views expressed herein do not necessarily represent the views of Cornerstone Research.

The authors request that you reference Cornerstone Research in any reprint of the information or figures included in this report.

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