Securities Regulation Daily Wrap Up, NEW LAWSUITS NEWS—NERA sees increase in new securities class action suits, (Jan 25, 2024)

By Rodney F. Tonkovic, J.D.

For the first time in four years, 2023 saw an increase in new cases filed, but there was also the lowest level of resolved cases in 10 years.

The number of new securities class actions rose in 2023, reversing a four-year downward trend, a new report from National Economic Research Associates says. In a review of trends in securities class action litigation in 2023, NERA found that filings in the finance sector had doubled, and filings related to the environment quadrupled. NERA attributed the increase in filings to an increase in the number of suits alleging violations of Rule 10b-5.

Overall trends. The report, "Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review," summarizes NERA's analysis of filing, dismissal, and settlement trends, as well as current topics. The number of new class actions rose from 206 cases filed in 2022 to 228 filed in 2023. According to NERA, turmoil in the banking industry led to a doubling of filings related to the finance sector, comprising 18 percent of the new filings. Filings related to the environment quadrupled when compared to 2022.

The number of resolved cases has declined for the sixth year in a row. In 2023, 90 cases were settled and 100 were dismissed, which, NERA says, is the lowest recorded level of resolutions in ten years. Over half of this decline is the result of a decrease in the number of settled cases with claims under Rule 10b-5, Section 11, or Section 12.

In 2023, the aggregate settlement amount totaled $3.9 billion. The average settlement value increased by 17 percent to $46 million, but this is largely due to a single $1 billion settlement by Wells Fargo & Company. The median settlement value was $14 million, representing a 7 percent increase (adjusted for inflation) over 2022.

Filing trends. Of the 228 new cases filed in 2023, 206 involved violations of Rule 10b-5, Section 11, or Section 12 (the report calls these "standard cases"). Filings involving Rule 10b-5 alone accounted for 184 of these filings, an increase from 137 in 2022. In these filings, 31 percent included an allegation related to missed earnings guidance and 29 percent alleged misled future performance.

On the other hand, there was a 10-year low in merger objection suits, with only seven filed in 2023. The year also saw a decline in filings involving crypto unregistered securities, with 11 filed in 2023, but 16 filed in 2022.

The electronic technology and technology services sector accounted for the largest proportion of filings in any sector, with 22 percent of the new filings. In part due to the banking crisis in early 2023, the finance sector accounted for 18 percent of the new filings. In contrast, and in part due to a decline in COVID-related suits, filings in the health technology and services sector declined from 27 percent in 2022 to 19 percent in 2023.

Event-driven cases. NERA also summarized trends in event-driven and other special cases, including:

- Crypto: there were 16 crypto-related filings in 2023, down from 26 in 2022.
- Banking: banking turmoil in 2023 led to 12 suits against banking institutions filed between December 2022 and October 2023.
- Environmental: eight cases related to environmental issues were filed in 2023, representing quadruple the number filed in 2022.
- Cybersecurity: there were three cybersecurity-related filings in 2023. With the exception of seven suits filed in

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2021, there have been at least three actions filed each year since 2019.

- SPACs: filings related to SPACs peaked with 31 in 2021, and have declined since, with 14 filed in 2023.

Resolutions. NERA has found a decline in the number of resolved cases since 2018. While resolutions declined across all categories, the report attributes over half of the decline, down to 190 from 223 in 2022, to a reduction in the number of settled standard cases. Out of the cases filed in 2023, 95 percent remained pending as of December 2023.

Other matters. Using a proprietary variable, NERA determined that the median losses to investors in 2023 were $923 million. That figure represents a 6 percent decline from 2022 and is the second highest recorded value in the last decade.

In 2023, the aggregate plaintiff's attorney fees and expenses declined from 2022's $1 billion to a total of $972 million. This amount comprised around 25 percent of the aggregate settlement value in 2023.

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