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Key Point Summary:
A Closer Look at the 2009 Securities Lawsuits

Recently, two major firms released year end reports summarizing their securities class action findings for 2009. The Stanford Law School Securities Class Action Clearinghouse, in cooperation with Cornerstone Research released their "2009: A Year in Review" report. NERA Economic Consulting released their report titled, "Recent Trends in Securities Class Action Litigation: 2009 Year-End Update." It is important to note that the total number of securities class action filings counted under each study vary as each reporting agency follows their own protocol for counting the number of newly filed litigations. The links to both reports can be found below. Today's Key Point Summary also includes references to the periodic journal from the D&O Diary blog titled, "A Closer Look at the 2009 Securities Lawsuits," also linked below.

Overall, securities class action filings were down slightly in 2009, totaling around 189 cases, compared to 224 in 2008, or a 15.6% decrease. The annual average between 1966-2007 in filed securities class action litigations is stated at 192. Whether comparing by count or by average, 2009 can be categorized as a year slightly below average with regard to securities class action filings.

Not surprisingly, the financial sector remains the industry with the highest amount of activity, primarily due to the spill over of credit crisis filings. These filings totaled 69 in 2009, representing suits brought against financial firms (as classified by the Standard Industrial Classification/SIC). Although 69 filings is significant, it is still 30% lower than the 99 filed in 2008 against financial firms. In today's continuing economic situation, we expect a high percentage of filings to continue to come from the financial industry during the next year.

Notable, are the 140 bank closures in 2009 that are interconnected to the credit crisis and other related economic issues. It appears that the number of filings against financial companies has tapered off to some degree, and the percentage coming from the financial industry seems to be leveling off as well.

Two developing trends are evident and worthy of notation in the studies by Stanford and NERA. The first identified is the surge of lawsuits against ETF's or leverage exchange-traded funds. In total, there were twelve filed in 2009, and amazingly, they all involve ETF's drawn from within a single fund family. These ETF's promised a return based on a benchmark analysis, and the complaint states that the defendants failed to disclose the true risks involved with these funds. These lawsuits make up 6% of the total in 2009 and it is likely that more of these types of claims will be filed in 2010. A recent press release by the law firm of Stuff, Stull & Brody identified 76 different ETF's that are currently being investigated.

The second trend that materialized in the later part of 2009 was the belated lawsuit filings. This is the backlog of lawsuits that appeared to be within days of their cut-off date and, at times, even filed after the expiration of the statute of limitations. It is disclosed in the reports that approximately 22 of the 94 securities lawsuits filed during the second half of 2009 were filed more than a year after their proposed class period cut-off date, and in some cases, as late as three years after the cut-off. It is still to be determined how these cases will stand up against the statute of limitations objections.

At the pace observed so far this year, count on 2010 being another consistent year, slightly above or below average. Despite the cause for the decrease in federal securities class action filings in 2009, you should not ignore how the economic climate affects your business. Be familiar with the protections afforded by your executive liability policies and how the trends identified relate to your risk profile.

Let the professionals at Kibble & Prentice assist in your analysis and review of your executive liability program for 2010.

To learn more, click on the links below.

- For the article review by **Kevin LaCroix, The D&O Diary**
  http://www.dandodiary.com/2010/01/articles/securities-litigation/a-closer-look-at-the-2009-securities-lawsuits/index.html
- For the **NERA Economic Consulting: 2009 Year-End Update**
  http://www.nera.com/image/Recent_Trends_Report_1209.pdf
- For the **Cornerstone Research 2009: A Year in Review**
  http://securities.stanford.edu/clearinghouse_research/2009_YIR/Cornerstone_Research_Filings_2009_YIR.pdf

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