

## Who Pays in Securities Class Action Settlements, How Much, and When?\*

Michael Klausner\*\*

Jason Hegland\*\*\*

When a securities class action settles, how much of the settlement is typically paid by the insurer, how much by the company, and how much by officers and directors? How often do securities class actions settle before the court's ruling on the motion to dismiss? When cases settle after the court has denied the motion to dismiss, how quickly do settlements tend to occur? Is there any correspondence between individual officer or director payments in class actions and the sanctions imposed on officers and directors in parallel SEC actions? What factors influence the answers to these questions? Until now, these questions could be answered anecdotally at best. On the basis of an extensive set of data that we have recently collected, we explore these questions quantitatively below. We do not present an integrated thesis or even interpretations of the data. Rather, because these data have been collected for the first time, we simply lay out some of the basic relationships that we find and defer more in-depth and detailed analysis for another day.

The data for the statistics presented here are taken from securities class actions filed between 2000 and 2003 and either settled or dismissed between 2000 and 2009, and parallel SEC enforcement actions. During this period, there were 731 cases filed, 442 settled, 251 dismissed with prejudice or dismissed without prejudice and not refiled, and 38 cases still pending.<sup>1</sup> Table 1 presents some basic information about these cases.<sup>2</sup>

---

\* The authors thank the PLUS Foundation and the Rock Center for Corporate Governance for funding of this research.

\*\* Nancy and Charles Munger Professor of Business and Professor of Law, Stanford Law School.

\*\*\* Research Associate, Stanford Law School

<sup>1</sup> Our database includes class actions filed through 2008. We selected cases filed between 2000 and 2003 for this article in order to examine a large proportion of cases that have been resolved.

<sup>2</sup> In some of the charts below, the total number of cases does not add up to the numbers in Table 1. This is due to missing data for some of these charts.

Table 1: Basic Outcomes

Cases Filed 2000 - 2003			
Settled	60%	Settlements*	
Dismissed	34%	Mean	Median
Ongoing	6%	\$48 million	\$7 million
Total	731	Parallel SEC Action?	
		Yes	19%
		No	81%
*Excludes Third Party Payments			

Who Pays Into Settlements?

When a securities class action settles, how often does the D&O insurer pay the full settlement? When it pays less, how much does it pay? Charts 1 and 2 provide answers to those basic questions. In 47% of cases filed between 2000 and 2003, the insurer paid the full settlement, and in 12% of cases, the insurer paid nothing. Chart 2 provides the full distribution of insurance payments.

Chart 1: Insurer Payments, Partial Payments and Nonpayments (as Percentage of All Cases Settled)

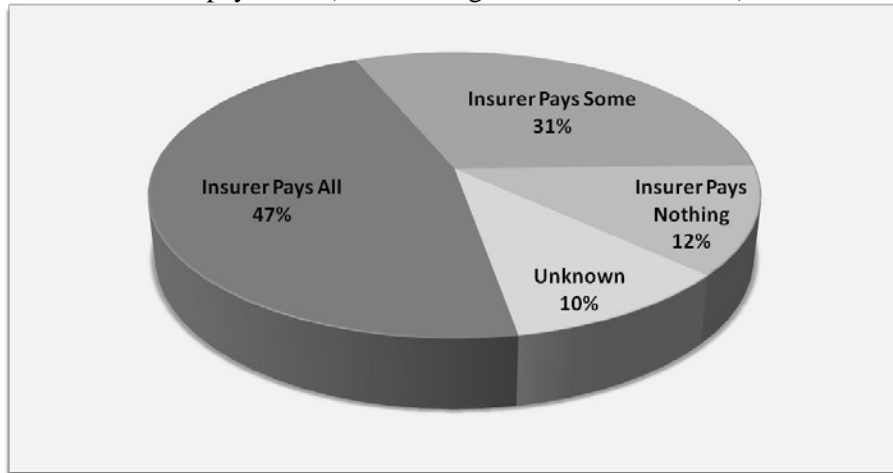
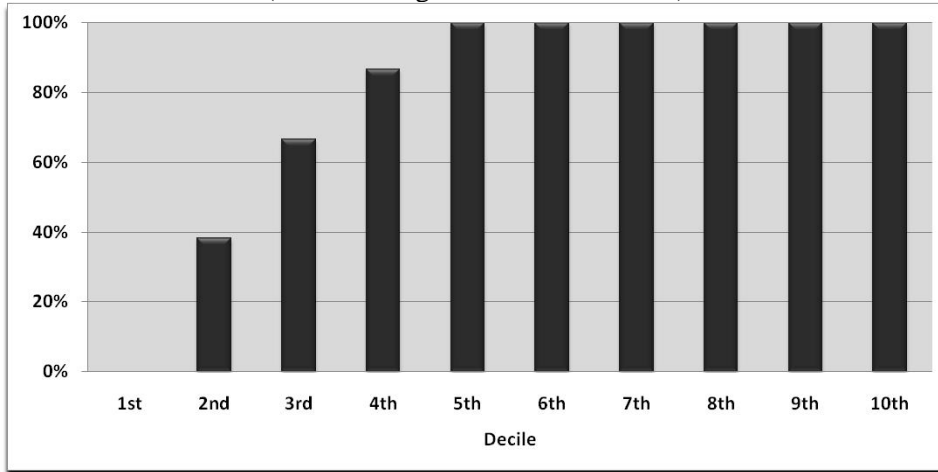


Chart 2: Distribution of Insurer Payments  
(As Percentage of Total Settlement)



What about individual officers and directors? Chart 3 shows the frequency with which various types of officers and directors are named in class actions. CEOs are named in 99% of cases, and CFOs are named in over 80%. Outside directors are named much less frequently but still in about 30% of cases, with fewer than half of those cases involving audit committee members. How often do officers or directors pay in settlements? Infrequently, as shown in Chart 4. Officers or directors pay in 3% of cases, and outside directors pay in 0.68% of cases during this period.

Chart 3: Who Are Named Defendants (As Percentage of All Cases Filed)

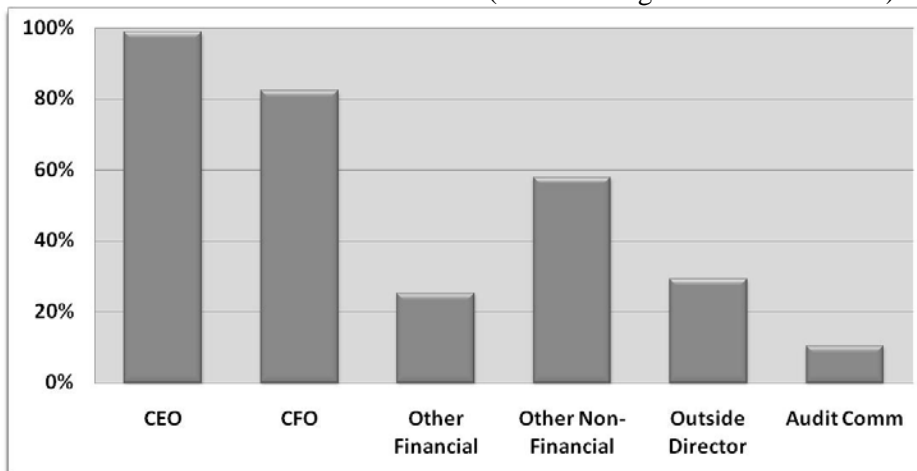
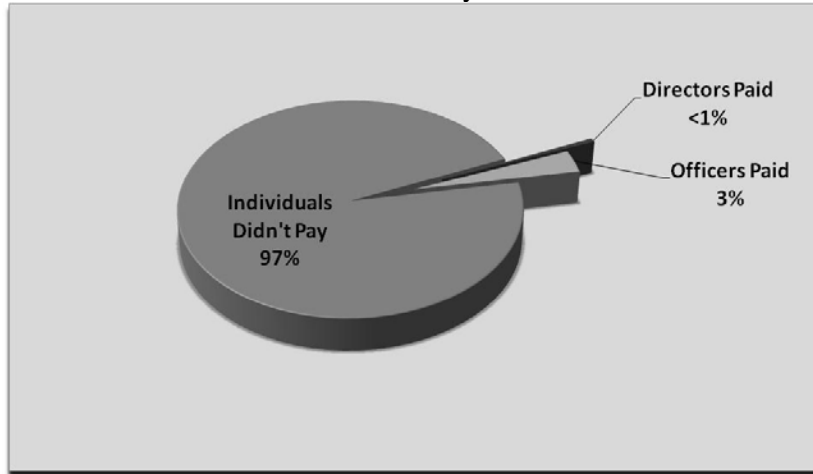
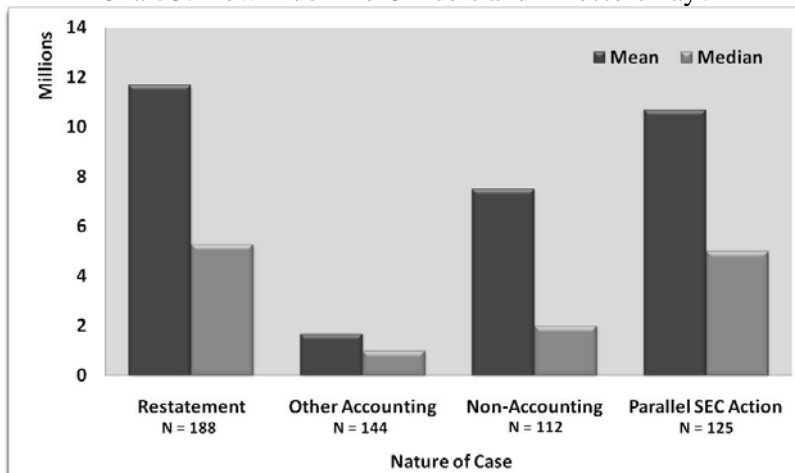


Chart 4: Director and Officer Payments In Settled Cases



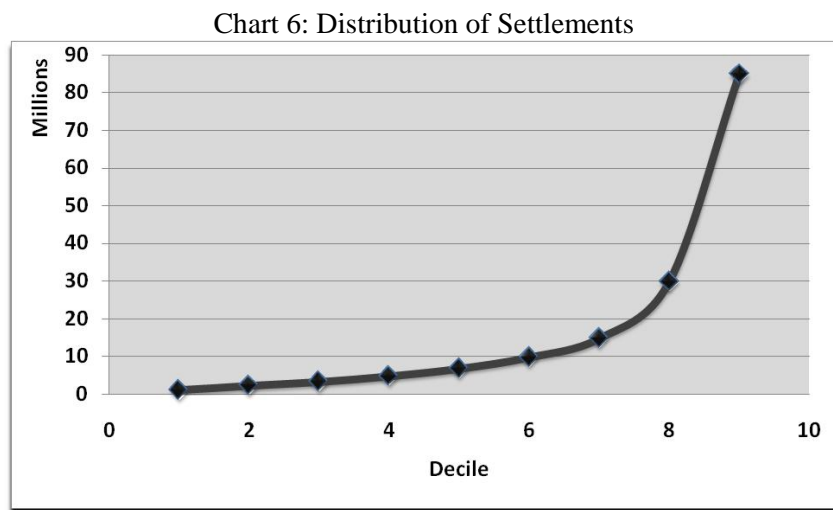
How much do they pay? Chart 5 breaks this down by type of case, showing that cases involving restatements and parallel SEC actions (the two not being mutually exclusive) are the most costly cases for officers.

Chart 5: How Much Do Officers and Directors Pay?



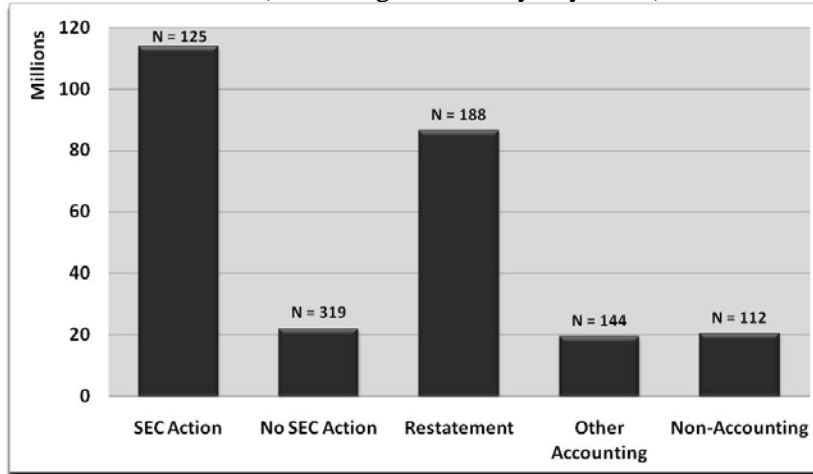
### How Much Is Paid in Settlements?

As shown in Table 1, the mean and median settlements for cases filed during our sample period were \$48 million and \$7 million, respectively. Chart 6 provides more detail regarding the distribution of settlements. Seventy percent of settlements are under \$15 million. The mean is increased substantially, however, by the largest few cases. The 90<sup>th</sup> percentile settlement is approximately \$85 million. The largest five settlements were for \$670 million, \$1.1 billion, \$1.6 billion, \$2.55 billion, and \$2.98 billion.



What affects the size of the settlement? Chart 7 breaks down cases into several types based on the allegations involved and based on whether or not there is a parallel SEC action. Not surprisingly, the cases with the largest settlements are those with parallel SEC enforcement actions and those involving restatements.

Chart 7: Settlement Size by Type of Case  
(Excluding Third Party Payments)



When In the Litigation Process Do Cases Settle?

When during the litigation process do settlements occur? Chart 8 provides a breakdown for all settlements of cases in our sample period. Forty-five percent of cases settle before the ruling on the motion to dismiss. Charts 9 and 10 provide the same information for cases for which there is a parallel SEC action and cases involving a restatement. As seen in those charts, those cases settle before the ruling on the motion to dismiss more frequently—50% and 56% of the time, respectively.

Chart 8: When Do Cases Settle (All Cases, N= 442)

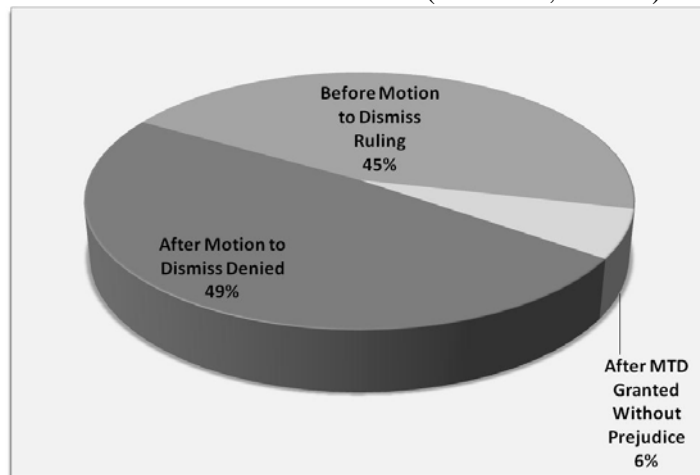


Chart 9: When Do Cases Settle (Parallel SEC, N = 125)

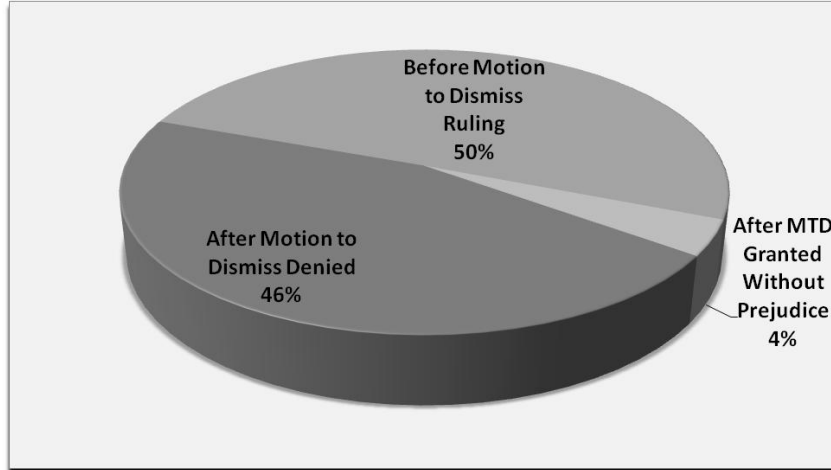
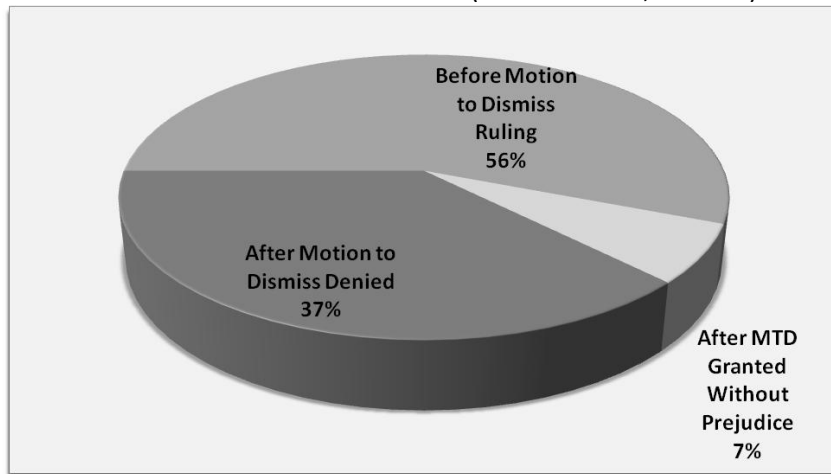
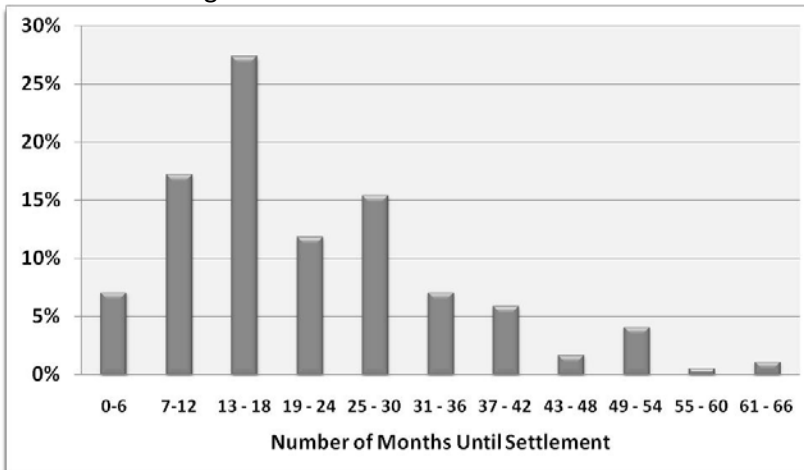


Chart 10: When Do Cases Settle (Restatements, N = 188)



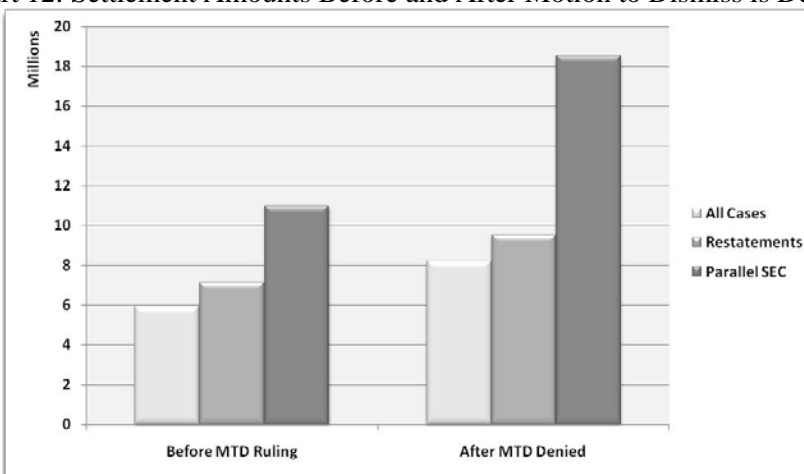
Among cases that settled after the motion to dismiss has been denied, the time between the denial and the settlement ranges from one month to five and a half years, with the mean and median time period being 21 months and 18 months, respectively. Chart 11 shows the distribution of settlement timing over this range.

Chart 11: Timing of Settlement After Motion to Dismiss is Denied



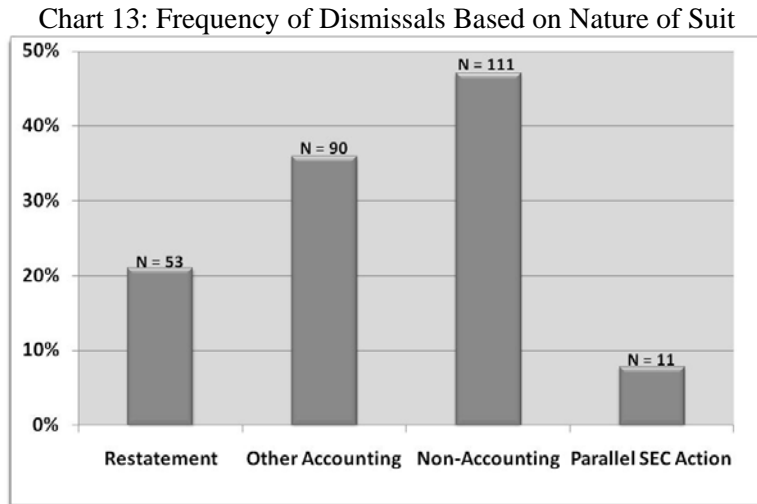
Settlement size varies according to the stage at which a case settles. As seen in Chart 12, cases that settle before the motion to dismiss tend to settle for smaller amounts than do cases that settle after the motion to dismiss. This is true of cases with and without parallel SEC actions, and with and without restatements.

Chart 12: Settlement Amounts Before and After Motion to Dismiss is Denied



Dismissals

As shown in Table 1, 34% of the cases filed between 2000 and 2003 were dismissed with prejudice or dismissed without prejudice and not refiled. Chart 13 shows the frequency of such dismissals based on the nature of the allegations and on whether there was a parallel SEC action. Cases with parallel SEC actions and cases involving restatements are dismissed less frequently than other cases.



Charts 14 and 15 show how many times the court allows plaintiffs to refile amended complaints – that is, how frequently the courts dismiss cases without prejudice.

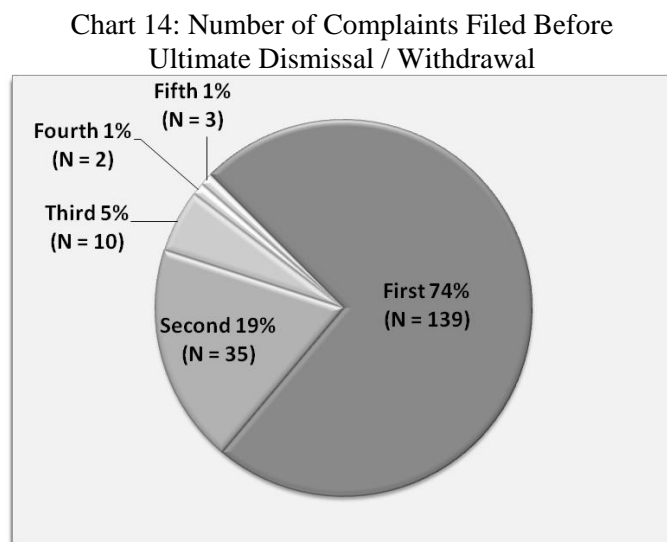
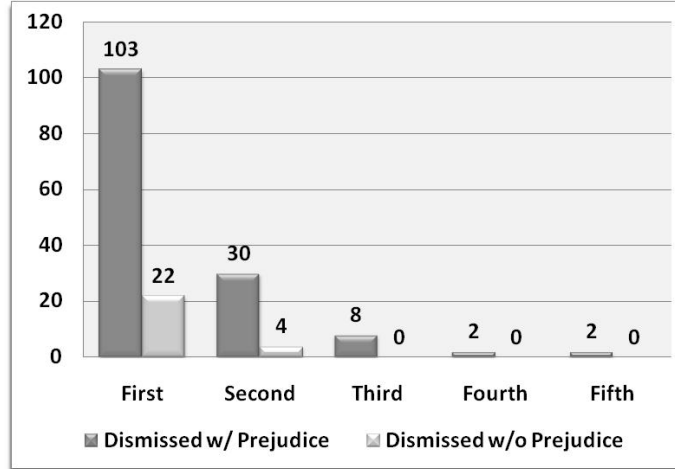
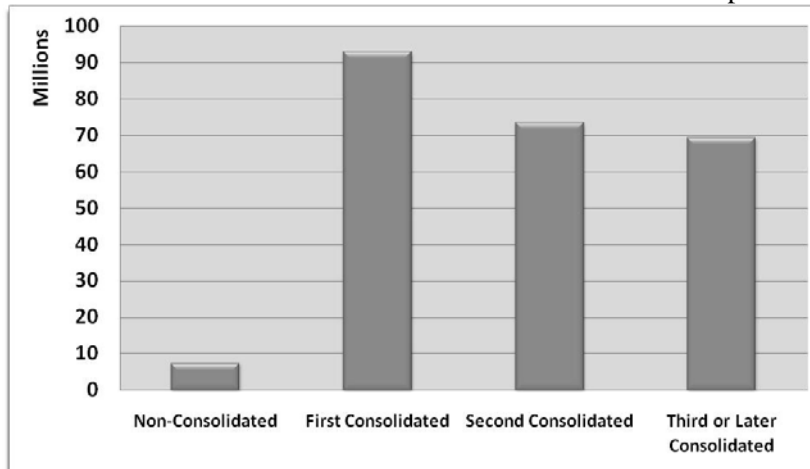


Chart 15: Complaints Dismissed With and Without Prejudice



As shown in Chart 16, when complaints survive the first motion to dismiss, settlements tend to be higher than in cases where the plaintiffs' first, second or third complaints are dismissed without prejudice and the plaintiff refiles a complaint that is not dismissed.

Chart 16: Settlement Size And The Number of Consolidated Complaints Filed



## SEC Outcomes Compared to Class Action Outcomes

SEC cases, much more frequently than class actions, result in sanctions against officers (and very occasionally outside directors). In the SEC cases parallel to the class actions examined here, there were 34 cases in which the SEC imposed a monetary penalty against the company and 13 cases in which the SEC required disgorgement of ill-gotten gains. Mean and median monetary penalties were \$144,000 and \$75,000, respectively. Mean and median disgorgements were \$2.5 million and \$184,000.

Table 2 shows the number of cases in which the SEC imposed penalties on individual officers, broken down by whether those officers paid into the settlement in the parallel class action.

Table 2: SEC Penalties for Officers and Officer Payments in Class Actions

	SEC Imposed Penalty	SEC Did Not Impose Penalty	SEC Actions Concluded	SEC Actions Pending
Officer Payment in Class Action	12 (92%)	1 (8%)	13	5
No Officer Payment in Class Action	64 (83%)	13 (17%)	77	44

This table shows that securities class actions are a poorly designed mechanism by which to impose liability on individual officers. Although the SEC may well sanction an officer unfairly in individual cases, in general it is reasonable to infer that when the SEC sanctions an officer that officer had engaged in misconduct. As shown in Table 2, however, those officers frequently avoid personal liability in class actions. The top row of Table 2 shows the 18 class actions with parallel SEC actions where officers paid into a class action settlement. Of those 18 cases, five of the SEC's enforcement actions are still pending, but of the 13 concluded actions, 12 ended with a penalty enforced by the SEC. The bottom row shows class actions with parallel SEC actions where there was no payment by an officer. Of these cases, 77 SEC actions have been concluded, and of those, a penalty was imposed on one or more officers in 64 cases. In other words, there were 64 cases where the SEC imposed a sanction on individual officers

or directors and yet these same officers and directors paid nothing into the class action based on the same misconduct.

### Conclusion

[to be added]