

Securities Plaintiffs Pursuing Crypto, Banking and High-Dollar-Value Cases in 2023, According to Cornerstone Research Report

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Cornerstone Research (a top consulting and expert testimony firm) recently issued its highly anticipated [midyear report on securities class action filings](#). The report examines recent trends in securities class action filings and provides insights about the types of cases filed, maximum dollar loss (MDL) amounts, and the impact of recent landmark decisions by the US Supreme Court and the US Court of Appeals for the Ninth Circuit.

Overall, despite a slight uptick in securities class action filings during the first half of 2023 compared with the second half of 2022, the pace of filings is still “considerably below” pre-pandemic peak levels from 2016 to 2020. At the same time, a substantial increase in MDL amounts suggests that plaintiffs are continuing to aggressively pursue securities claims, but are focusing on value over volume. Read more about that and other trends below.

New filings involving cryptocurrency and banking are up

During the first half of 2023, cases related to cryptocurrency made up the most common securities class action category. While filings against coin issuers and crypto exchanges were down sharply, filings against crypto-adjacent companies and crypto miners are on pace to top their 2022 levels. In fact, **new filings against crypto miners have already met or exceeded the number of actions in all of 2022**. This increase in filings follows the turmoil in the cryptocurrency market and heightened regulatory scrutiny by the Securities and Exchange Commission, among other agencies.

Likewise, driven in part by a series of rapid bank failures occurring during the first half of 2023, filings in the financial sector tripled during the first half of the year compared with the first half of 2022.

Maximum dollar loss hits record high

MDL estimates the impact of all the information revealed during the class period by measuring the dollar-value change in the defendant corporation’s market capitalization. During the first half of 2023, **MDL reached its highest semiannual total on record** (\$2,245 billion). For new securities class actions filed in the Ninth Circuit, MDL increased by a whopping 500% from the second half of 2022, despite the fact that the number of Ninth Circuit filings were only slightly up from the second half of 2022. This may suggest that plaintiffs are pursuing higher-value cases over a higher volume of cases – a trend that may, in turn, raise the stakes for defendants facing new securities class actions.

New filings involving M&A, COVID-19, SPACs and 1933 Act claims are down

In the first half of 2023, there were only four new M&A-related securities class action filings, representing a mere 4% of that category’s 2017 high. This decrease is likely driven by the corresponding downward trend in M&A activity more generally. Similarly, if the current pace holds through 2023, there will be less than half of COVID-19 and SPAC filings relative to 2022.

As for new 1933 Act securities class actions – those asserting claims under Sections 11, 12 and 15 of the Securities Act of 1933 – filings are down substantially across state courts nationwide. In fact, there was just one state-court-only 1933 Act case filed during the first half of 2023, compared with 11 filed during the first half of 2022. The report attributes this decline to the Delaware Supreme Court’s 2020 *Sciabacucchi* decision enforcing federal forum-selection provisions (read [this March 2020 Cooley post for more on the Sciabacucchi decision](#)). Section 11 filings in federal court also are down because of a decrease in IPO activity.

Slack and Fisher decisions

Cornerstone also highlights two key court cases:

1. The Supreme Court’s Section 11 decision in *Slack*, which will limit the scope of lawsuits brought by investors who purchase shares from companies that go public through a direct listing (read [this June 2023 Cooley blog post on](#)

[the Slack decision](#)).

2. The Ninth Circuit's opinion in *Fisher*, the upshot of which is that a shareholder filing a derivative suit within the Ninth Circuit can no longer avoid Delaware forum-selection provisions by tacking on federal claims brought under Section 14(a) of the Exchange Act (see this [June 2023 Cooley blog post on the Fisher decision](#)).

[Read Cornerstone's full report.](#)

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