A California Public Company was 63% More Likely to be Sued Than An Average Domestic Issuer in 2007

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WilmerHale's inaugural annual Report on West Coast Securities Litigation & SEC Enforcement found that there were 44 public companies sued in 2007 in Western US, a striking 56% increase over 2006, reversing what some had hoped was a permanent post-Enron decline in securities class action lawsuits.

The Report, which compiles private securities litigation and SEC enforcement actions brought in the nine Western states that comprise the Ninth Circuit, reveals that an unexpectedly large number of shareholder class action lawsuits were filed against West Coast companies last year, with California public companies bearing the most significant burden of lawsuits. The research shows that the US Securities and Exchange Commission ("SEC") was similarly aggressive in its regulatory scrutiny of alleged corporate malfeasance, bringing actions involving misconduct at 72 public companies and 39 broker-dealers and investment advisers in the region.

"Options investigations that made news in 2007 are quickly giving way to a broad array of SEC enforcement priorities, including numerous investigations focused on the full range of players in the subprime mortgage crisis," said Randall Lee, founding partner of WilmerHale's Los Angeles office and member of the Securities and Litigation Departments.

The Report finds that: 1) a California public company was 63% more likely to be sued than the average domestic issuer; 2) the median West Coast settlement in a private action dropped to $6 million, nearly 40% below the national median; and 3) more than two-thirds of the SEC's federal court enforcement actions involved the technology and financial services industries.

"The accelerated pace of lawsuits is a trailing indicator of a declining market," said Jonathan Shapiro, a partner in WilmerHale's Palo Alto office and member of the Securities Department. "This report shows that California public companies are the most vulnerable in the nation, and it is now clear that the economic aftermath of the subprime crisis is affecting technology companies that seemingly have nothing to do with home mortgages or esoteric structured finance products."

The Report shows that technology companies were sued more often than public companies in other sectors, accounting for 36% of all securities class actions filed in the West. Financial services and life sciences were also targeted, with both industries accounting for around 15% of the litigation.

“With the declining economic outlook, in 2008 the usual volatility of stock prices for most technology and life sciences companies in California could increase, resulting in a higher level of securities litigation, particularly related to public company disclosures and accounting cases,” said Christine Beliveau, Managing Director, Financial & Economic Consulting at Huron Consulting Group. “SEC enforcement may also see an increase due to some of the business events that occur during economic downturns - acceleration of mergers, acquisitions, and layoffs. Fear of these business events could lead to questionable actions.”

Looking ahead to 2008, WilmerHale expects that there will be: 1) acceleration in the resolution of stock options-related cases; 2) increased pace and expanded scope of investigations related to the subprime market crisis; 3) greater SEC focus on Foreign Corrupt Practices Act and insider trading cases; and 4) a moderate increase in class action filings, including challenges to cost accounting, reserves, and MD&A.

The Report was compiled and written by Jonathan Shapiro, Randall Lee, Dale Edmondson, Michael Mugmon and Laurel Parker. To view the Report on West Coast Securities Litigation & SEC Enforcement, please click here.