

M&A Litigation Lifts Securities Suits To 20-Year High

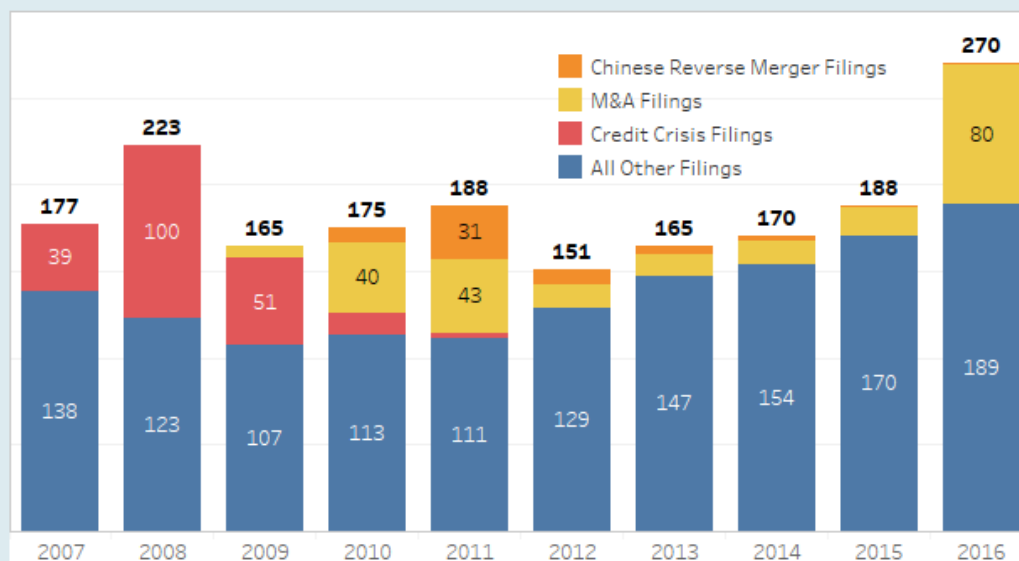
By **Chelsea Naso**

Law360, New York (February 1, 2017, 6:48 PM EST) -- Federal securities class actions soared to their highest level in two decades, buoyed by the steep uptick in mergers and acquisitions-related filings in the wake of the Delaware Chancery Court's tough stance against disclosure-only settlements in the Trulia merger case last year, experts say.

The semiannual report, released by Cornerstone Research on Tuesday, found that 2016 saw a record 270 new cases, an increase of 82 filings over 2015 and 44 percent above the historical average between 1997 and 2015. That increase was largely spurred by the 80 M&A-related securities filings made at the federal level in 2016, a 371 percent increase from the 17 M&A-related filings recorded in 2015, according to Cornerstone Research.

M&A Filings Buoy 2016 Securities Suits

M&A-related filings at the federal level increased 371% last year.



Note: There were two cases in 2011 that were both an M&A filing and a Chinese reverse merger company. These filings were classified as M&A filings in order to avoid double counting.

Source: Cornerstone Research

The surge in M&A-related filings is the result of the Delaware Chancery Court’s January 2016 rejection of the disclosure-only settlement of a stockholder challenge to the \$2.5 billion merger of Trulia Inc. and Zillow Inc., leaving those still seeking disclosure-only settlements to find a forum not affected by that precedent, explained Ronald Betman, an Ulmer & Berne LLP trial lawyer.

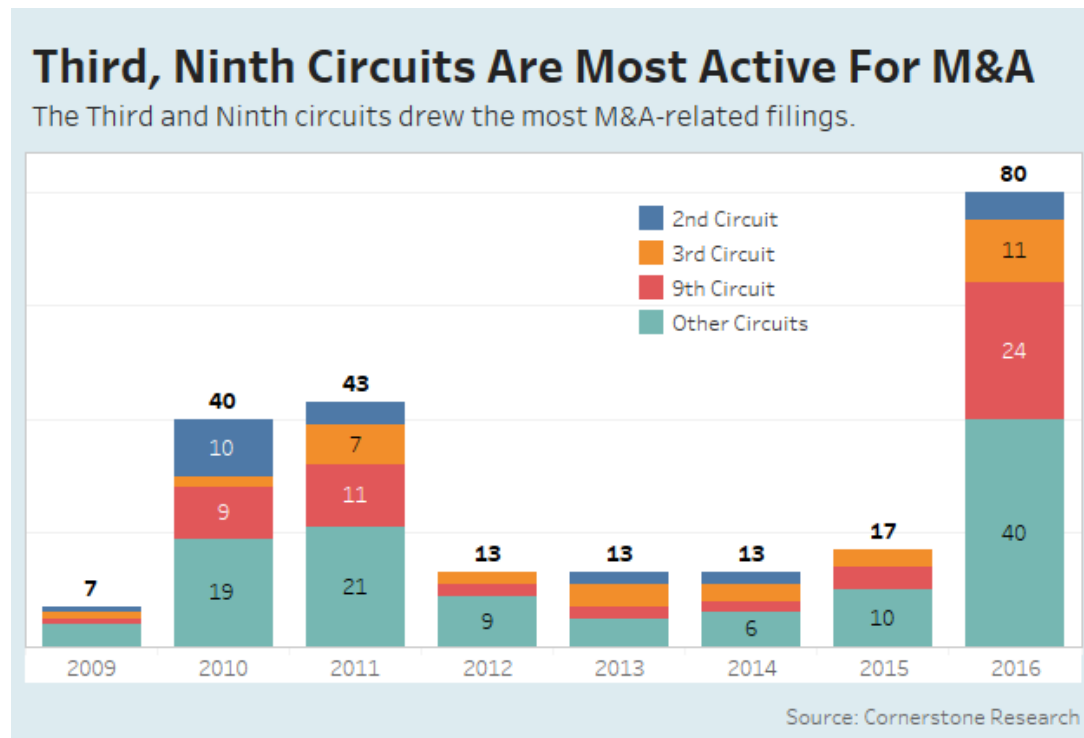
“Securities class actions spiked in 2016 in large part due to plaintiff forum-shopping. Specifically, M&A filings quadrupled from previous years, accounting for nearly 30 percent of all filings, following the adverse precedent in the Delaware state courts,” he said.

In the 43-page Trulia opinion, Chancellor Andre G. Bouchard said the court "must evolve" away from its predisposition to approve deals that end investor suits in exchange for sometimes-minor disclosures about the merger, attorneys' fees and sweeping, unrelated releases from future claims for the companies involved.

Chancellor Bouchard's tough stance on disclosure-only settlements built off growing disdain for the practice in Delaware, including Vice Chancellor Sam Glasscock III's September 2015 challenge to the fairness of such settlements despite approving one in a case stemming from Thoma Bravo LLC's \$3.6 billion acquisition of Riverbed Technology Inc.

The early effects of the crackdown on disclosure-only cases became evident in Cornerstone Research’s midyear report, which was released in August. The half-year report found that at the state level, there was a drop-off in M&A-related litigation. Delaware had clocked the largest decline, with just 10 shareholder suits in the first half of the year, compared to the 91 lodged in all of 2015.

The full-year report also shows that while there is a newfound preference for federal filings, not all circuits are seeing the same increase.



The Third Circuit, which includes Delaware, and the Ninth Circuit, which includes California, saw the highest level of M&A filings since Cornerstone Research began tracking such filings in 2009, according to the report.

The Third Circuit saw 11 M&A filings in 2016, compared to three each in 2015 and 2014. The Ninth Circuit drew 24 M&A filings during the year, a sixfold increase from the four seen in 2015, according to the report. There were just two in the circuit in 2014.

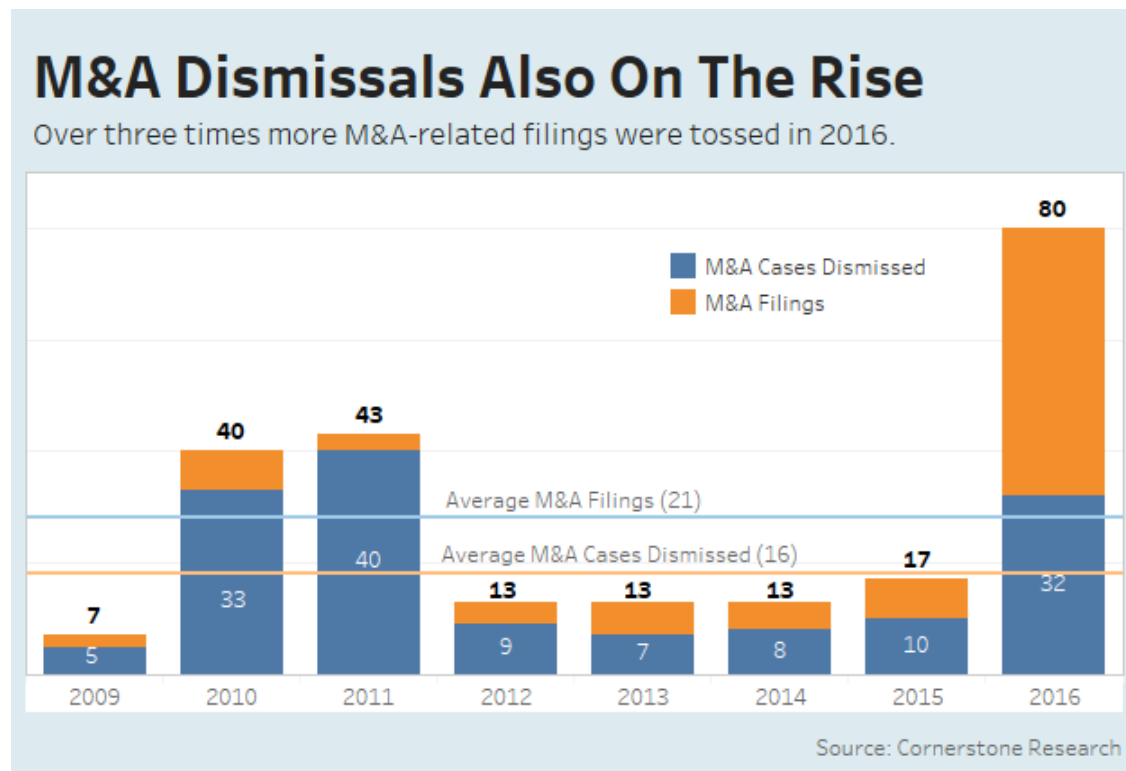
For 2016, the Fourth Circuit was the third most active for federal M&A filings, with seven M&A filings, the report found. The Fifth, Seventh and Eleventh circuits each had six M&A filings.

The shift toward certain circuits over others may have to do with forum-shopping provisions, particularly in the Third Circuit as many Delaware-incorporated companies have adopted exclusive forum bylaws.

But the Trulia decision is likely only part of what drove up the M&A filings as there was an uptick in overall securities litigation, explained John Gould, a Cornerstone Research senior vice president.

“M&A filings increased markedly after the Delaware Chancery Court’s rejection in January 2016 of a disclosure-only settlement in Trulia, shifting several merger-objection lawsuits from state to federal venues,” he said in a statement. “But this is just part of the story. Traditional filings maintained their momentum from 2015 and the first half of 2016. The previous three semiannual periods have all had more than 90 such filings, including 94 in the second half of 2016.”

The increase in M&A-related filings was also accompanied by a higher dismissal rate among M&A-related filings as opposed to other securities class actions, Cornerstone Research found.



During 2016, there were 32 M&A-related filings dismissed, compared to the 22 other federal filings that were tossed, according to the report. The number of dismissals in 2016 marks an increase for M&A filings but a decrease for federal filings.

For M&A-related filings, there were an average of 21 cases dismissed each year between 2009 and 2015, or 78 percent of filings. The number of dismissals seen in 2016 was the highest since 2011, which saw 40, according to the report. There were just 10 in 2015.

There was an average of 71 dismissals of other federal filings each year between 2009 and 2015, representing 47 percent of those filings, according to the report. There were 68 dismissals in 2015.

--Editing by Christine Chun and Jill Coffey.