

LARGE D&O SETTLEMENTS AND JUDGMENTS

Prior to 2000, it would have been difficult to identify any settlement or judgment of more than \$100 million in a “typical” D&O lawsuit. For a variety of reasons, even the most dangerous cases for directors and officers to defend from a liability or damages standpoint were resolved for less than \$100 million. However, since then, the size of D&O settlements, particularly in securities class action lawsuits, has increased dramatically. The following summarizes many of those settlements and judgments which exceed \$100 million:

1. A \$2.97 billion settlement in consolidated securities class action litigation against Tyco International Ltd. and its directors and officers. The litigation alleged that the defendants overstated the company’s income from 1999 through 2002 by \$5.8 billion, resulting in the criminal convictions of the company’s CEO (Kozlowski) and CFO (Schwartz). As part of the settlement, the company assigned to the plaintiffs the company’s claims against its auditor relating to the accounting fraud.
2. A \$2.876 billion judgment against Richard Scrushy in a derivative lawsuit on behalf of HealthSouth. The lawsuit alleged that Scrushy, as the former CEO of the company, knew about and participated in a massive fraud which ran for seven years and resulted in \$2.7 billion of inflated earnings. The court ruled that the company suffered \$3.115 billion in damages, which were off-set by \$239 million in recoveries from other defendants.
3. A \$2.83 billion settlement in a shareholder class action against Cendant Corp. and its directors and officers. The lawsuit alleged that the defendants artificially inflated the company’s stock price through an accounting fraud, which resulted in the company restating its financial statements for several years. The lead plaintiffs in the litigation were three of the country’s largest public pension funds, New York State Common Retirement Fund, New York City’s Pension Funds, and the California Public Employees Retirement System.
4. A \$2.7 billion settlement in securities class action lawsuits against Nortel Networks Corporation and its directors and officers. The litigation alleged that the defendants misrepresented the financial performance and condition of the company, resulting in two restatements by the company and the discharge of the company’s top three executives. The settlement consists of \$575 million cash from the company, \$228.5 million from insurers and 14.5% of the company’s outstanding common shares.

5. A \$2.46 billion judgment in a securities class action against Household International and its former CEO, CFO and Vice-Chair of Consumer Lending. The lawsuit alleged the defendants failed to disclose to investors that the company was engaged in a massive predatory lending scheme, which ultimately resulted in the company taking a \$600 million charge against earnings and restating its financial statements for eight years. The judgment amount, which is by far the largest trial judgment in a securities class action, was rendered by the court following a jury verdict on liability and consisted of about \$1.5 billion in damages and about \$900 million in prejudgment interest. The company previously paid a related \$484 million regulatory settlement.
6. A \$2.425 billion settlement in a securities class action litigation against Bank of America, Merrill Lynch and their directors and officers on behalf of the Bank's shareholders. The litigation arose out of the Bank's acquisition of Merrill Lynch and alleged that proxy materials relating to the acquisition contained misrepresentations with respect to (i) losses suffered by Merrill Lynch prior to the acquisition, and (ii) agreements to pay up to \$5.8 billion in bonuses to Merrill Lynch employees before the acquisition closed. The defendants also agreed to implement corporate governance improvements. The settlement is in addition to a \$150 million settlement by the defendants with the SEC.
7. A \$2.4 billion settlement in a securities class action lawsuit against Time Warner and its directors and officers. The lawsuit alleged that the defendants misrepresented material facts in connection with Time Warner's merger with AOL, including inflated revenues and improper accounting practices. The company's auditor, Ernst & Young, agreed to pay an additional \$100 million. The settlement does not include several large "opt-out" claims or shareholder derivative lawsuits.
8. A \$1.9 billion judgment in a shareholder derivative lawsuit against certain directors of Southern Peru Copper Corporation. The Delaware Chancery Court ruled that the defendant directors breached their fiduciary duty of loyalty by approving Southern Peru's purchase of a mining company from Southern Peru's controlling shareholder for a grossly excessive purchase price. The only director defendants who were found liable also served as directors of Southern Peru's controlling shareholder.
9. A \$1.3 billion settlement of shareholder class action litigation against Fortis N.V. (formerly Ageas N.V.) and its directors and officers. The litigation was prosecuted in Amsterdam and is the largest investor settlement under the Dutch collective settlement procedures. The claimants alleged the defendants misrepresented information to investors relating to the Company's acquisition of ABN-AMRO (a bank) shortly before the global financial crisis in 2008, including information about the value of its collateralized debt obligations, the extent of its subprime-related mortgage backed securities holdings and the company's solvency. The

Dutch government took over the company's operations on October 4, 2008. D&O insurance reportedly funded about \$300 million of the settlement.

10. A \$1.1 billion settlement in a securities class action lawsuit against Royal Ahold NV and its directors, officers and other professionals. The lawsuit arose out of accounting problems at Ahold's U.S. Foodservices subsidiary which required the restatement of the company's financial statements for more than two years. The settlement is reportedly the largest settlement paid by a non-U.S. company in securities class action litigation, and follows a ruling by the U.S. District Court that non-U.S. shareholders of Ahold who purchased their shares on securities exchanges located outside the U.S. could participate in the U.S. litigation.
11. A \$960 million settlement in a securities class action against AIG and its directors and officers. The litigation alleged the defendants misled investors regarding the company's financial condition prior to the 2008 financial crisis as well as the company's securities lending program and credit default swap portfolio.
12. A \$960 million settlement in a consolidated securities class action litigation against McKesson Corp. and its directors and officers. The litigation alleged the defendants misrepresented material information in connection with its acquisition of HBO & Co. for \$12 billion in stock and the company's subsequent restatement of earnings related to software sales due to improper revenue recognition. Four former executives pled guilty to various criminal charges relating to the wrongdoing, and criminal charges remain pending against other company officials.
13. An \$895 million settlement in a securities class action lawsuit against UnitedHealth Group and its directors and officers. The lawsuit alleged that the defendants misrepresented and failed to disclose various information relating to stock option backdating practices which ultimately resulted in the company restating its financial statements for several years with more than \$1.5 billion of expense adjustments. The class action settlement was in addition to (i) earlier settlements by individual officers with the SEC and in a shareholder derivative suit, pursuant to which certain senior officers personally disgorged approximately \$930 million, and (ii) a \$17 million settlement in a related ERISA tag-along class action lawsuit. The securities class action settlement did not include a settlement of claims against the company's former CEO and former general counsel.
14. A \$830 million settlement in securities class action litigation against Merck & Co., Inc. and its officers. The litigation alleged the defendants made false and misleading statements and failed to disclose material information regarding the safety and efficacy of the Company's product Vioxx. The plaintiff fee award is payable by the defendants in addition to the \$830 million settlement amount.
15. A \$750 million settlement in a securities class action lawsuit against Xerox and its directors, officers and auditor. The lawsuit alleged that the defendants

misrepresented the financial performance and condition of the company, resulting in the company restating five years of operating results. \$670 million of the settlement is being paid by the company in five installments and \$80 million is being paid by the outside auditor (KPMG). In addition, the company previously paid a \$10 million penalty to settle SEC charges and created a \$125 million reserve for potential liability in three related lawsuits.

16. A \$730 million settlement in a securities class action against Citigroup Inc. and its directors and officers. The lawsuit was filed on behalf of investors who purchased debt and equity securities of the company in 2006 to 2008 and alleged the defendants misled investors with respect to the company's risk exposures to mortgaged-backed securities and other assets.
17. A \$725 million settlement in a securities class action against AIG and its directors and officers. The lawsuit alleged the defendants engaged in accounting fraud by using a sham transaction with General Re to artificially increase AIG's claims reserves. Five employees of AIG and General Re were found guilty of criminal charges relating to the transaction. The lawsuit also alleged the defendants artificially inflated AIG's stock price by paying undisclosed commissions to insurance brokers and participating in a bid-rigging scheme. \$175 million of the settlement was funded upon court approval of the settlement and the remaining amount is payable upon AIG's completion of a stock offering. The settlement is in addition to a \$90 million related derivative lawsuit settlement arising from the same allegations.
18. A \$688 million settlement in securities class action litigation against Merck & Co., Schering-Plough (which was acquired by Merck) and their directors and officers. The litigation alleged that the defendants delayed for about two years disclosing the results of a study relating to the effectiveness of two anti-cholesterol drugs manufactured by the companies. The study was intended to show the two subject drugs were more effective than generic and competitor drugs, but the study in fact found no advantage from using the two subject drugs.
19. A \$629 million settlement of securities class action litigation against Wachovia Corporation and its directors, officers, securities underwrites and auditors. The litigation was on behalf of Wachovia's shareholders as well as bond and note holders and alleged the defendants misrepresented information about the nature, quality and risk profile of the company's mortgage loan portfolio. \$37 million of the settlement was funded by the auditor defendants.
20. A \$600 million settlement in a securities class action against Countrywide Financial and its directors and officers. The lawsuit alleged the defendants misrepresented to investors information relating to the company's subprime mortgage business, financial performance and risks. The settlement does not include related shareholder derivative, ERISA stock-drop and SEC proceedings.

21. A \$600 million settlement in securities class action litigation against Cardinal Health, Inc. and its directors and officers. The litigation alleged that the defendants misrepresented information relating to the company's financial performance, resulting in a three-year restatement of the company's financial reports. The settlement does not include related ERISA stock drop litigation and derivative lawsuits.
22. A \$600 million settlement in securities fraud, ERISA and derivative lawsuits against Lucent Technologies and its directors and officers. The lawsuits arose from Lucent's December 2000 announcement that its pro forma fourth quarter results had to be substantially reduced to reflect the fact that revenue had been improperly recognized. The lawsuits further alleged that the defendants misrepresented and failed to disclose material information regarding the company's financial condition and performance, as well as business prospects. The company's stock price dropped during the class period from more than \$80/share to less than \$12/share, reportedly giving rise to the largest damage exposure in securities class action history.
23. A \$590 million settlement in securities class action litigation by shareholders of Citigroup and its directors and officers. The lawsuit alleged the defendants misrepresented the value of mortgage-backed securities held by Citigroup and failed to disclose Citigroup's true financial risks relating to those investments. The settlement did not resolve a related securities class action by bondholders of Citigroup.
24. A \$500 million settlement in a mortgage-backed securities class action against Countrywide Financial Corporation and its directors, officers and securities underwriters. The lawsuit alleged that defendants misrepresented information in connection with packaging and selling mortgage-backed securities to investors.
25. A \$490 million settlement in a securities fraud lawsuit against Bank of America and certain of its directors and officers. The lawsuits alleged that both prior and after the merger between Bank America and Nations Bank, the defendants made misrepresentations regarding the effects of the merger, as well as the extent of loss exposure for certain loans or investments. Approximately \$200 million of the settlement was funded by insurance.
26. A \$475 million settlement in a securities class action lawsuit against Merrill Lynch and its directors and officers. The lawsuit alleged the defendants failed to fully and accurately disclose the company's exposure to subprime debt and likely impact of the deteriorating subprime mortgage market. A related class action on behalf of bondholders against the company and its directors and officers was settled for \$150 million and a related ERISA tag-along lawsuit against the company and fiduciaries of its retirement plans was settled for \$75 million.

27. A \$468 million settlement in a consolidated securities class action lawsuit against Dynegy and its directors and officers. The lawsuit alleged the defendants issued false and misleading information related to "Project Alpha," a structured natural gas transaction entered into by the company in 2001. Several company employees either pled guilty or were convicted of criminal wrongdoing in connection with that transaction. \$150 million of the settlement was funded by D&O insurance, \$250 million of the settlement was paid by the company in cash, and \$68 million of company common stock was issued to class members.
28. A \$457 million settlement in a securities class action against Waste Management and its directors and officers. The lawsuit alleged that the defendants misrepresented material facts regarding the company's 1998 merger with USA Waste Services, Inc. and a 1999 accounting scandal which resulted in the company twice revising reported earnings and taking a \$1.8 billion write-off.
29. A \$454.5 million jury verdict in a lawsuit by two individuals against Comp USA, its former CEO, a principal shareholder and two affiliated companies of the shareholder. The plaintiffs in the lawsuit allegedly entered into an agreement with CompUSA to open CompUSA stores in Mexico. The jury found the defendants improperly breached that agreement and awarded the franchising deal to the principal shareholder defendant. The jury allocated the total damage award 65% to the former CEO, 25% to the principal shareholder, and 10% each to two affiliated companies of the principal shareholder. The court subsequently reversed the verdict against CompUSA and its former CEO, and reduced to \$121 million the judgment against the principal shareholder.
30. A \$445 million settlement in a securities class action and derivative litigation against HealthSouth Corp. and its directors and officers. The litigation alleged senior officers engaged in a massive accounting fraud for many years, ultimately resulting in the company restating its financial statements and the company stock dropping from \$31 per share to .09¢ per share. The settlement was reportedly funded with \$230 million from D&O insurance and \$215 million in common stock and warrants from the company. Claims against the company's auditors and underwriters were not part of the settlement. The settlement was in addition to a \$100 million settlement with the SEC.
31. A \$410 million settlement in a securities class action against Raytheon Company and its directors and officers. The lawsuit alleged accounting irregularities in connection with the Raytheon Engineering & Constructors division and a failure to take appropriate write-downs on a plane refurbishment program for the U.S. Navy. The settlement calls for payment of \$200 million cash, to be funded partially by insurance, and warrants valued at \$210 million. The company's auditors, PricewaterhouseCoopers, have agreed to pay an additional \$50 million to settle the claims against them.

32. A \$410 million settlement in securities class action litigation against Freddie Mac and its officers and directors. The litigation alleged the defendants misstated the company's earnings from 1999 to 2003 in order to disguise its earnings volatility, resulting in a \$5 billion restatement of its earnings.
33. A \$400 million settlement in a securities class action lawsuit against Marsh & McLennan Co. and its directors and officers. The lawsuit alleged the defendants failed to properly disclose Marsh's receipt of alleged kickbacks from insurance companies in exchange for recommending its clients purchase policies from those companies. A related ERISA class action lawsuit was settled for \$35 million.
34. A \$400 million settlement in a securities class action against Qwest Communications International, Inc. and its directors and officers. The lawsuit alleged that between 1999 and 2002, Qwest fraudulently recognized over \$3.8 billion in revenue and excluded \$231 million in expenses as part of a scheme to meet revenue and earnings projections. The settlement dismisses claims against the company and all of the D&O defendants except the former CEO and CFO. The class settlement is in addition to a \$250 million penalty which was paid to the SEC, and a \$411 million settlement with a group of investors who opted out of the class settlement.
35. A \$352.6 million settlement in a securities class action lawsuit by non-U.S. shareholders against Royal Dutch Shell and its directors and officers. The lawsuit alleged misrepresentations in connection with the company's oil reserves accounting treatment of those reserves. The settlement, which is reported to be the largest securities class action settlement in Europe, is for the benefit of investors who both resided and purchased shares outside the U.S. and is in addition to a \$120 million settlement by the company with the SEC in 2004 relating to the same allegations. The same proportional settlement is also being offered to investors in the United States. In a related securities class action on behalf of U.S. investors, the defendants agreed to pay an additional \$118 million."
36. A \$325 million settlement in a securities fraud lawsuit and an ERISA lawsuit against certain directors and officers of Global Crossing and its subsidiaries and Plan fiduciaries. The lawsuits alleged that the defendants improperly accounted for "swap" transactions which eventually led to a massive write-down and Global Crossing's bankruptcy, although Global Crossing never restated its earnings. The D&Os allegedly sold over \$1.5 billion of their personal Global Crossing stock during a three-year class period. Approximately \$250 million of the settlement was funded by D&O and Fiduciary insurance, with the balance coming from Global Crossing's former Chairman (\$55 million) and former law firm (\$20 million).
37. A \$303 million settlement in a securities class action against General Motors Corp. The lawsuit alleged that GM issued false and misleading statements

regarding the company's financial condition. Deloitte & Touche, General Motor's outside auditor, will contribute \$26 million towards the settlement. A related shareholder lawsuit was settled by the company agreeing to certain governance reforms and paying a plaintiffs' attorney fee up to \$7.5 million.

38. A \$300 million settlement in a securities class action against Bristol-Myers Squibb Co. and its directors and officers. The lawsuit alleged that the defendants made overly optimistic statements about its investment in ImClone Systems, Inc. and the likelihood that ImClone would obtain FDA approval for one of its new drugs. Plaintiffs also alleged that the defendants overstated the company's revenue between 1999 and 2001 by \$2.5 billion by offering incentives to wholesalers.
39. A \$300 million partial settlement of securities class action litigation by Chrysler Corp. shareholders against Chrysler Corp., Daimler Benz and the CEO of Daimler Benz. The consolidated litigation alleged that Daimler Benz' CEO misled investors in connection with the merger of Chrysler and Daimler Benz in 1997 by stating at the time of the merger that it was a "merger of equals," when in fact he always intended to make Chrysler a subsidiary of Daimler Benz. The CEO was allegedly motivated to make the misleading statement in order to enhance the likelihood that Chrysler shareholders and the U.S. Government would support the proposed merger and in order to avoid paying shareholders of Chrysler a premium to acquire Chrysler. Insurers reportedly paid \$220 million of the settlement.
40. A \$300 million settlement in a securities class action against Oxford Health Plans, Inc. and its directors and officers and auditor. The Lawsuit alleged the defendants misrepresented material information about the company's financial condition and operations, primarily as a result of a defective computer system that could not handle the HMO's billing and claims data. The auditor paid \$75 million of the settlement and \$225 million was paid by Oxford and its insurers.
41. A \$295.1 million settlement in a securities class action lawsuit against directors, officers and securities underwriters of Delphi Corp. The litigation alleged that the defendants artificially inflated the company's share prices by issuing misleading earnings statements in years prior to the company's bankruptcy. \$88.6 million of the settlement was reportedly funded by insurance companies and \$204 million of the settlement represents ownership interest in the reorganized company. A related ERISA class action was settled for \$47 million.
42. A \$290 million settlement in a securities class action lawsuit against Williams Cos., Inc. and its officers. The lawsuit alleged the defendants failed to disclose accurate information in connection with the company's energy trading business and the spin-off of a subsidiary to public investors. The company reportedly paid between \$145 million and \$220 million of the settlement in cash, and the balance of the settlement was funded by insurance.

43. A \$284 million judgment and settlement in a lawsuit brought by bondholders of Safety-Kleen Corp. The bondholders alleged that defendants engaged in accounting improprieties and related misrepresentations, including material overstatement of revenues and earnings. After a seven week trial, the judge directed a verdict in favor of the bondholders in the amount of \$200 million against the company's former CEO and former CFO. Prior to the start of the trial, Pricewaterhouse Coopers agreed to pay \$48 million to settle claims against it, and former directors of the company agreed to settle claims against them for \$36 million. Insurers funded the former directors' settlement.
44. A combined \$278.5 million settlement of securities class and shareholder derivative litigation against Broadcom Corp. and its directors and officers. The lawsuits alleged the defendants misrepresented material information relating to, and breached their fiduciary duties by approving or allowing, the backdating of stock options issued to company executives and employees. The securities settlement was \$160.5 million and the shareholder derivative settlement was \$118 million. The entire derivative settlement was funded by D&O insurance, including Side A D&O insurance policies. In a separate settlement, the company's former CEO personally paid \$26.6 million to the company.
45. A \$277.5 million jury verdict in a securities class action lawsuit against Apollo Group, Inc. and two of its senior officers. The lawsuit alleged that defendants failed to properly disclose information relating to Apollo's subsidiary, the University of Phoenix (UOP). Two former employees of UOP had filed a False Claims Act action against UOP alleging misuse of U.S. Department of Education funding to UOP, which resulted in a \$9.8 million settlement. The securities class action was filed following a significant drop in Apollo's stock price one week after the False Claims Act settlement was announced. The jury verdict, which was reversed by the trial court based on lack of loss causation but later reinstated by the Ninth Circuit Court of Appeals, was allocated by the jury 60% to the company, 30% to the CEO and 10% to the CFO. The lawsuit ultimately settled for \$145 million.
46. A \$275 million settlement of a derivative and class action lawsuit against directors and officers of Activision, its former majority shareholder (Vivendi) and two officers who purchased 24% of the company from Vivendi for less than market value. The lawsuit alleged that Vivendi and the two purchasing officers breached their fiduciary duties to the company by precluding the company from purchasing more of the stock at a discounted price. The entire settlement amount was paid to the company in settlement of the derivative claim.
47. A \$275 million settlement of securities class action litigation against Bear Stearns and its former directors and officers. The lawsuit alleged the defendants misrepresented and failed to disclose information about the company's business and financial performance and condition prior to the 2008 financial crisis, including losses in the value of mortgage-backed assets on its books and the

company's risk and liquidity positions. The settlement was reportedly funded from a \$6 billion fund set aside by JPMorgan Chase & Co. for litigation and other expenses when it bought Bear Stearns.

48. A \$273 million settlement in securities class action and shareholder derivative lawsuits against El Paso Corp. and its directors and officers. The lawsuits alleged wrongdoing in connection with purported wash trades, mark-to-market accounting, off-balance sheet debt, overstatement of natural gas and oil reserves, and manipulation of the California energy market. The company is contributing \$48 million and its insurers are contributing \$225 million. Seventeen million dollars of the total settlement was attributable to the shareholder derivative lawsuit.
49. A \$259 million settlement in a shareholder class action against 3Com, U.S. Robotics, and various directors and officers of those companies. The lawsuit alleged the defendants misrepresented material facts regarding the companies' financial performance and 3Com's acquisition of U.S. Robotics. The alleged wrongdoing occurred both before and after the acquisition. Two of the lead plaintiffs were institutional investors.
50. A \$230 million settlement in a shareholder derivative lawsuit against directors and officers of Computer Associates, Inc. The lawsuit alleged that the defendants breached their fiduciary duties and unreasonably jeopardized the company's financial condition by awarding to three executives \$500 million in stock options. The settlement followed a ruling by the court that the three executives must return 9.5 million of the 20.25 million shares they received under what the court found to be a misinterpretation of the company's compensation plan.
51. A \$225 million settlement in a securities class action lawsuit against Converse Technology and its directors and officers. The litigation alleged misrepresentations in connection with securities options backdating. The company reportedly paid \$165 million and former CEO Kobi Alexander agreed to contribute \$60 million towards the settlement.
52. A \$220 million settlement in a securities class action lawsuit against Waste Management, Inc. and its directors and officers and auditor. The lawsuit alleged that the defendants overstated the company's profits over several years, resulting in a restatement of the company's financial statements with a \$1.32 billion adjustment in previously reported profits for the preceding six years. A related shareholder derivative lawsuit was settled for approximately \$23 million in total consideration.
53. A \$215 million settlement of securities class action litigation against HCA and its directors and officers. The litigation arose out of HCA's March 2011 Initial Public Offering, and alleged that the defendants misrepresented and omitted from the IPO disclosure documents material facts regarding HCA's Medicare and Medicaid

revenues, in violation of the Securities Act of 1933. Plaintiffs asserted that the misstatements and omissions were revealed when HCA announced revised earnings guidance in July 2011, shortly after completion of the IPO.

54. A \$215 million settlement in a securities class action lawsuit against Sears, Roebuck and Co. its officers. The litigation related to statements made by the defendants concerning the company's credit card business. The company expects to recover approximately \$130 million of the settlement from insurers.
55. A \$215 million settlement in a securities class action lawsuit against Tenet Healthcare Corp. and its directors and officers. The lawsuit alleged that the defendants misrepresented the company's business and financial performance by failing to disclose that a large portion of its revenue for the two preceding years was from Medicare reimbursements pursuant to an unsustainable practice by the company. D&O insurance reportedly paid \$75 million of the settlement, and the former CEO and former COO of the company personally paid \$1 million and \$500,000, respectively.
56. A \$202 million settlement in securities class action litigation against real estate investment trust Mills Corporation and its officers and directors. The litigation alleged the defendants misrepresented its financial results for six years, resulting in Mills restating its earnings for twenty-three consecutive quarters. The settlement included a \$29.5 million payment by the company's auditors.
57. A \$200 million settlement in a securities class action against Motorola Solutions, Inc. and its directors and officers. The lawsuit alleged the defendants misrepresented the company's projected revenues in anticipation of the company splitting into two companies.
58. A \$200 million settlement in a securities class action lawsuit against CMS Energy and its directors and officers. The lawsuit alleged defendants issued false financial statements by including \$5 billion of revenue from "round-trip" or "wash" trades which lacked economic substance. Insurers paid \$76.5 million of the settlement, and CMS paid \$123.5 million.
59. A \$200 million shareholder class action lawsuit against directors, officers and investors in Kinder Morgan, Inc. The lawsuit alleged the defendants, all of whom purchased the company in a management-led buyout, paid an unreasonably low price for the company.
60. A \$200 million settlement in a securities class action against The Charles Schwab Corporation, its directors and officers and related entities. The lawsuit alleged the defendants made material misrepresentations in connection with Schwab's Yield Plus Fund, a short-term fixed income mutual fund which held significant investments in mortgage-backed securities.

61. An approximately \$195.5 million settlement in a securities class action against Rite Aid Corporation and its directors, officers and outside auditor. The lawsuit alleged that the defendants engaged in various earnings-inflating and expense-deflating accounting practices, which resulted in the company restating its financial statements for three years and removing approximately \$1.5 billion of after-tax earnings from those financial statements. The settlement was funded with \$43.5 million in cash paid by the company's insurers and 20 million shares of common stock, with a guaranteed minimum value of \$149.5 million. Claims against the former chairman, CFO and president of the company, as well as the company's auditor, were not released as part of the settlement and were subsequently pursued by plaintiffs.
62. A \$193 million settlement in a securities class action lawsuit against PNC Financial Services Group and its officers. The lawsuit alleged that the defendants misled investors regarding the financial condition of PNC by "selling" \$762 million in bad corporate loans to three partnerships created by PNC with AIG. PNC eventually restated its financial statements, reducing earnings by \$155 million.
63. A \$190 million settlement in securities class action litigation against Motorola, Inc. and its directors and officers. The litigation alleged that the defendants failed to properly disclose material information regarding the company's dealings with Telsim (a foreign vendor which was heavily financed by Motorola) and the company's financial exposures relating to transactions with Telsim.
64. A \$179 million settlement of the securities class action claims against former outside directors of Enron Corp. The claims alleged the defendants failed to disclose in securities offering documents the true financial condition and performance of Enron, which ultimately filed bankruptcy. \$13 million of the settlement amount is being contributed personally by the outside director defendants as disgorgement of gain they realized on their sale of Enron stock. The settlement does not settle any of the claims against numerous other former officers and directors.
65. A \$173 million settlement of a securities class action lawsuit against Maxim Integrated Products, Inc. and its officers. The lawsuit alleged the defendants misrepresented and failed to disclose information regarding the backdating of stock options to company officers.
66. A \$171 million judgment in a shareholder derivative lawsuit against directors of El Paso Pipeline Partners LP. After a trial, the Delaware Chancery Court ruled the defendants breached their fiduciary duties by agreeing to pay an excessive amount for natural gas pipelines, consistent with the desires of the partnership's parent company.
67. A \$170 million settlement of a securities class action litigation against Fannie Mae and its officers. The litigation alleged that the company misrepresented its

financial condition and performance to investors of securities issued by the company in 2007 and 2008 as part of an alleged scheme to artificially bolster the company's capital position in light of declining values of mortgages.

68. A \$168.8 million jury verdict in a lawsuit by the FDIC against three former officers of the Homebuilders Division of Indy Mac bank. The verdict found the defendants to have been negligent and breached their fiduciary duties with respect to 23 loans. The FDIC contended the defendants approved the loans despite danger signals regarding the slumping housing market and in order to meet production goals and obtain bonus compensation. The verdict is in addition to claims against the same defendants involving scores of other loans and claims against the bank's former CEO. The applicable \$80 million of D&O insurance maintained by the bank was reportedly exhausted by defense costs.
69. A \$168 million settlement in a securities class action lawsuit against National City Corp. and its directors and officers. The lawsuit alleged the defendants misrepresented the quality of its mortgages and home equity loans and the severity of its losses.
70. A \$166 million settlement in securities class action litigation against Bennett Funding Group and its officers and directors. The litigation alleged defendants operated a ponzi scheme, and was prosecuted following an SEC investigation.
71. A \$165 million settlement in a state court breach of fiduciary duty class action against directors of Digex, Inc. The lawsuit alleged that the defendants breached fiduciary duties owing to Digex shareholders by agreeing to merger terms which were inadequate to the shareholders. The settlement was funded entirely with stock in the acquiring company (World Com).
72. A \$165 million settlement in securities class action litigation against Schering-Plough Corporation and its officers and directors. The litigation alleged defendants failed to disclose manufacturing deficiencies relating to a new cholesterol drug developed by the company, and the resulting harm to the drug's commercial viability and profitability.
73. A \$164 million settlement of securities class action litigation against Pharmacia (which was acquired by Pfizer) and its directors and officers. The litigation alleged that the defendants misrepresented the safety of its anti-inflammatory drug Celebrex. When the FDA failed to grant full approval for the marketing of the drug without certain warning labels, the company's stock price dropped.
74. A \$162 million settlement in a securities class action lawsuit against Dollar General Corporation and its directors and officers. The lawsuit alleged that the defendants materially misrepresented financial information regarding the company, ultimately resulting in the company restating its financial statements for fiscal 1998, 1999 and 2000. During that time period, the company raised \$200

million in a debt offering and certain individual defendants sold nearly \$300 million in company securities through a registered offering.

75. A \$160 million settlement in a securities class action litigation against Brocade Communications and certain former directors and officers. The litigation alleged that the defendants misrepresented and omitted material information from 2000 to 2004 relating to the company's stock option backdating practices. The settlement followed the criminal conviction of the company's CEO (who was sentenced to 21 months in jail and fined \$15 million) and the company's former personnel director (who was sentenced to four months in jail and fined \$1.25 million).
76. A \$160 million jury verdict against Cell Tech International, Inc. and two of its officers in a shareholder derivative claim and a direct breach of contract claim by the company's founder, Daryl Kollman. The lawsuit alleged the plaintiff was wrongly fired by the company after a change-in-control, and the defendants breached an agreement to register stock owned by the plaintiff for public sale.
77. A \$153 million settlement of a securities class action litigation against Fannie Mae and its officers and auditor. The litigation alleged that the company issued false financials over a four year period, which were ultimately restated. One-half of the settlement amount was paid by the auditor defendant.
78. A \$150 million settlement in securities class action litigation against TXU Corp. and its directors and officers. The litigation alleged misstatements regarding the company's financial performance and condition. At least \$66 million of the settlement was paid by D&O insurance.
79. A \$150 million settlement in a securities class action against Broadcom Corp. and certain of its former directors and officers. The lawsuit alleged that Broadcom improperly accounted for millions of dollars in warrants issued to customers who purchased specific amounts of Broadcom products. Allegedly, company officials sold more than \$80 million in stock prior to revealing information about the warrants, at which time Broadcom's share price dropped 35 percent. Insurers reportedly paid \$40 million of that settlement.
80. A \$148.1 million judgment in a shareholder class action against the CEO and General Counsel of Dole Foods. After a trial, the Delaware Chancery Court ruled the defendants breached their fiduciary duties when a company controlled by the CEO acquired sixty percent (60%) of Dole's shares that the CEO did not already control. The Court ruled that the defendants committed fraud in the process that led to the transaction, thereby preventing the shareholders from receiving a fair price in the transaction.
81. A \$146.25 million settlement in a securities class action against Duke Energy and its directors and officers. The litigation alleged the defendants made

misrepresentations and omissions of material fact relating to the identity of the company's CEO after the company's merger with Progress Energy.

82. A \$145.5 million settlement in securities class action and shareholder derivative litigation against DPL, Inc. and its directors, officers and auditor. The litigation arose out of DPL's investments in numerous Central America ventures, which ultimately resulted in more than \$200 million of investment loss to DPL. Plaintiffs alleged that the defendants failed to properly disclose the existence and speculative nature of the investments, the true value of the investments, and the mismanagement of the company's investment portfolio. Insurers reportedly paid \$70 million of the settlement, and the auditor reportedly contributed \$5.5 million to the settlement.
83. A \$144 million settlement in a securities class action and a shareholder derivative lawsuit against Charter Communications, Inc. and its directors and officers. The lawsuit alleged that Charter used misleading accounting practices causing it to issue false and misleading financial statements concerning its operations and prospects. Insurers contributed \$64 million to the settlement with the remainder to be paid in stock and warrants.
84. A \$142 million settlement in a shareholder class action against Informix Corporation, its directors and officers and accounting firm. The lawsuit, which purportedly resulted in the largest securities fraud settlement in the history of Silicon Valley, alleged that the defendants violated the federal securities laws by issuing materially false financial statements for three and one-half years. Those financial statements were eventually restated. Fifty-one million dollars of the settlement was paid in cash and the remaining \$91 million was paid in company stock. The defendant accounting firm paid \$34 million of the \$51 million cash portion of the settlement.
85. A \$139 million settlement in a shareholder derivative litigation against directors and officers of News Corp. The lawsuit alleged the defendants breached their fiduciary duties in connection with the company's 2011 British phone hacking and illegal reporting scandal and the purchase of an entertainment company owned by the daughter of News Corp.'s chairman, Robert Murdoch. Among other things, plaintiffs alleged the defendant directors condoned Murdoch's habitual use of News Corp. for his personal power and gain. The money settlement, which reportedly was paid in full by D&O insurance, was in addition to various governance reforms.
86. A \$139 million settlement in a securities class action lawsuit against Symbol Technologies, Inc. and its directors and officers. The lawsuit alleged that defendants fraudulently misrepresented the company's revenues and profits resulting in artificial inflation of its securities. The terms of the settlement require the company to distribute to the class common stock worth at least \$96.25 million and \$38.75 million in cash. The company's former CEO will personally pay

\$4 million cash. The settlement does not resolve related shareholder litigation against Symbol's auditor.

87. A \$138 million settlement in a securities class action against Biovail Corp. and its directors and officers. The litigation alleged that the defendants made a series of materially false and misleading statements about the company's publicly reported financial condition and performance.
88. A \$137.5 million settlement in a shareholder derivative lawsuit against directors and officers of Freeport-McMoran Copper & Gold, Inc. The lawsuit alleged the defendants breached their fiduciary duties by approving the company's acquisitions of McMorRan Exploration Co. and Plains Exploration & Production Co. for a combined \$9 billion. The shareholder plaintiffs alleged the defendants had conflicts of interest with respect to the acquisitions because of overlapping directors and ownership of the three companies. D&O insurance reportedly paid \$115 million of the settlement and the remaining \$22.5 million was paid by Freeport. A condition of the settlement was that the Freeport board of directors declare a special dividend to shareholders equal to the settlement amount (less the plaintiff fee award), thereby effectively paying to shareholders the net derivative settlement amount.
89. A \$137.5 million settlement in a securities class action litigation against Coca-Cola Co. and its directors and officers. The lawsuit alleged that the defendants misrepresented and omitted material information about the company's business and financial results in 1999 and 2000 by, among other methods, boosting revenues through forcing some of the company's key bottlers to accept excessive beverage concentrate.
90. A \$137.5 million settlement in securities class action litigation against Electronic Data Systems Corporation and its former CEO, CFO and executive vice president. The litigation alleged the defendants made false statements regarding the company's revenue between 2001 and 2002, which artificially inflated the stock price.
91. A \$130 million settlement in a securities class action litigation against Doral Financial Corp. and its directors and officers. The litigation alleged that the defendants improperly accounted for its derivative portfolio of interest-only strips. The settlement, which was contingent upon the company's ability to obtain financing for its continuing business operations, was reportedly composed of \$95 million from the company, \$34 million from the D&O insurers and \$1 million from one or more individual defendants.
92. A \$127.5 million settlement in securities class action litigation against Edward Jones & Company and its officers and directors. The litigation alleged the defendants did not adequately disclose revenue-sharing payments from seven

mutual fund families. The settlement included \$72.5 million in vouchers distributed to class members.

93. A \$125 million settlement of securities class action litigation against Wells Fargo and its officers and securities underwriters. The litigation alleged the defendants misrepresented material information in connection with the company's sale of mortgage-backed securities in 17 separate offerings.
94. A \$124 million settlement in a securities class action lawsuit against New Century Financial and its directors, officers, underwriters and auditor. The lawsuit alleged the defendants made material misrepresentations relating to its loan portfolio, including its loan origination practices with respect to subprime mortgage loans. \$65 million of the settlement was paid by D&O insurers, \$44 million was paid by the auditor defendant and \$15 million was paid by the underwriter defendant. An additional \$26 million was paid by D&O insurers in settlement of related SEC proceedings.
95. A \$122 million settlement in a securities class action against Mattel, Inc. and its directors and former officers. The lawsuit alleged the defendants misrepresented material information relating to Mattel's acquisition of The Learning Co. Mattel acquired that company for \$3.5 billion in stock and was forced to sell the company one year later for no cash and a portion of any future profits from the company.
96. A \$120.5 million settlement in securities class action litigation against Lernout & Hauspie Speech Products and its officers and directors. The lawsuit was filed after Lernout & Hauspie announced that due to past accounting errors it has overstated revenues by \$377 million, leading to the company's bankruptcy.
97. A \$120 million settlement in a securities class action against Bank One and its directors and officers. The lawsuit arose out of Bank One's merger with First Chicago National Bank. Defendants allegedly misrepresented Bank One's financial results upon which plaintiffs relied in approving the merger.
98. A \$120 million settlement in a securities class action against Conseco, Inc. and its directors and officers. The lawsuit alleged that the defendants misrepresented the company's financial results for 1999.
99. A \$120 million settlement in securities class action litigation against Deutsche Telekom AG and its CEO. The litigation alleged the company's SEC statement and prospectus were false and misleading because they failed to disclose merger discussions with VoiceStream and they overstated the company's real estate portfolio by \$2 billion euro.
100. A \$117.5 million settlement in securities class action litigation against Peregrine Systems Inc. and its officers and directors. The litigation alleged defendants overstated the company's revenue, resulting in a restatement which reduced

reported revenue by \$509 million. Several officers pleaded guilty to criminal wrongdoing. An initial settlement for \$56.3 million resolved the claims against two former directors, a former officer and Arthur Anderson. A second \$61.2 million settlement resolved the claims against the remaining six former outside director defendants.

101. A \$117.5 million settlement in securities class action litigation against Mercury Interactive Corporation and its former officers. The litigation arose after Mercury Interactive restated its financial statements from 2002 to 2004 and disclosed that it had backdated stock options on fifty-four occasions.
102. A \$115.5 million settlement of shareholder class actions against Philip Morris Companies, Inc. and its D&Os. The lawsuits alleged the defendants failed to disclose material information regarding the addictive effects of nicotine in cigarettes and regarding alleged manipulation of the company's sales performance through "channel stuffing" of its products.
103. A \$115 million settlement in a securities class action against Interpublic Group and its directors and officers. The lawsuit arose from Interpublic Group's five year restatement of its financial results correcting inter-company charges wrongly declared as income for one of its European offices. The settlement is to be funded by \$20 million in cash and \$95 million in Interpublic Group common stock.
104. A \$115 million settlement in a shareholder derivative lawsuit on behalf of AIG against former officers of AIG. The lawsuit alleged the defendants breached their fiduciary duties to AIG by approving payments of allegedly excessive commissions to C.V. Starr, Inc., an entity owned by the defendants. \$85.5 million of the settlement was reportedly paid by insurance, and the balance was paid by the defendant.
105. A \$114.5 million settlement in a securities class action lawsuit against SCOR S.E. and its directors and officers. The lawsuit, which was brought on behalf of shareholders of a reinsurance company acquired by SCOR (i.e., Converium Holding Ltd.), alleged that Converium misrepresented and omitted material information in various public disclosures relating to its financial condition and performance. The settlement resolved claims by both U.S. investors and non-U.S. investors, and resolved litigation pending in both the U.S. and in the Netherlands.
106. A \$113.7 million settlement in a securities class action lawsuit against MicroStrategy, Inc. and its directors and officers. The lawsuit alleged that the defendants misrepresented the financial condition and performance of the company, resulting in a restatement of the company's financial statements for three years. As part of the settlement, the company issued notes to the class members for \$80.5 million in cash and a distribution of company stock guaranteed to be worth at least \$16.5 million. Some of the company stock was

paid directly by the D&O defendants. The cash portion of the settlement was payable in five years, although the company is required to make interim payments of \$3 million every six months.

107. A \$111 million settlement of shareholder class action and derivative litigation against IKON Office Solutions and its directors and officers. The lawsuits alleged that the defendants artificially inflated the company's stock price by issuing misleading financial reports from 1996 through 1998, during which period the company acquired 220 corporations. The settlement does not resolve related shareholder litigation against IKON's auditor.
108. A \$100 million settlement in a shareholder class action against directors of El Paso Corp. and others. The lawsuit alleged that El Paso directors breached their fiduciary duties in connection with their investigation, negotiation and recommendation to shareholders of the company's acquisition by Kinder Morgan, Inc. for \$21 billion. The lawsuit also alleged that defendant Goldman Sachs & Co., El Paso's financial adviser, had a conflict of interest because it owned nearly 20% of Kinder Morgan.
109. A \$110 million settlement in a consolidated securities class action lawsuit against CVS Corp. and its Chief Executive Officer. The lawsuit alleged that the defendants violated the federal securities laws by delaying discounts on merchandise, waiting several months to disclose that the company intended to close 200 underperforming stores, and delaying disclosure that a pharmacist shortage would have a negative impact on company earnings. The settlement was funded "primarily" by insurance.
110. A \$105 million settlement of securities class action litigation against Washington Mutual's directors and officers. The litigation alleged that the defendants misrepresented the bank's financial results, internal controls and risk management policies with respect to the bank's subprime lending activities, which led to the bankruptcy of the bank's parent holding company. The entire settlement was funded by D&O insurance and was in addition to an \$85 million settlement by defendant securities underwriters and an \$18.5 million settlement by the defendant auditor. The settlement did not resolve separate litigation by the FDIC against the directors and officers.
111. A \$104 million settlement in securities class action and derivative litigation against Prison Realty Trust and its existing and former officers and directors. The litigation arose out of a merger between Prison Realty and Corrections Corporation of America (CCA). Plaintiffs alleged that Prison Realty made false statements in the context of a merger with CCA. \$48 million of this settlement was paid by Prison Realty and CCA's insurance policies. The remaining \$72.4 million consisted of 16.5 million shares of Prison Realty's common stock distributed to class members.

112. A \$100 million settlement of securities class action lawsuits against two mutual funds sponsored by Oppenheimer and the trustees of those funds. The lawsuits alleged that the defendants issued false offering documents related to the funds which did not adequately disclose the funds' heavy investments in risky securities, such as mortgage-backed securities, credit-default swaps and total-return swaps. The settlement did not resolve similar securities class actions against other Oppenheimer-sponsored mutual funds.
113. A \$100 million settlement in a securities class action against AT&T and its directors and officers. The lawsuit alleged that the defendants issued false and misleading forward-looking statements regarding the company's business and financial prospects. The settlement occurred one week after the jury trial in the lawsuit commenced.
114. A \$100 million settlement in a securities class action lawsuit against Honeywell International, Inc. and its directors and officers. The lawsuit alleged that the defendants misrepresented the success of Honeywell's merger with Allied Signal, Inc., thereby artificially inflating the price of Honeywell's securities. The lead plaintiffs were institutional investors. The company's insurers reportedly paid \$85 million of the settlement.
115. A \$100 million settlement in securities class action litigation against American Express Financial Advisors and its CEO and president. The litigation alleged the defendants failed to disclose to purchasers of financial plans and mutual funds sold by the defendants that defendants had a conflict of interest because they recommended these plans and funds based on the defendant's ability to obtain advisor fees.
116. A \$99.25 million settlement in securities class action litigation against Cisco Systems and its current and former officers and directors. The litigation alleged that Cisco misrepresented its financial performance, resulting in a \$2.4 billion inventory write-off.
117. A \$92.5 million settlement of federal and state shareholder class actions against The Boeing Company and its directors and officers. The lawsuits alleged that the defendants misrepresented and concealed information about the status of Boeing's commercial airplane production problems and the financial results of those operations. The entire cash settlement was paid by Boeing's D&O insurers.
118. A \$54 million settlement of the securities class action claims against the outside directors of WorldCom, Inc. \$36 million of the settlement amount will be funded by D&O insurance, with the balance being paid by the settling directors personally. The class action lawsuit alleged a "massive" accounting fraud which the Court stated would be easy "for any party" to prove. The settlement does not settle claims against some of the defendant officers.

About the Author:

Dan A. Bailey is the Chair of the Firm's Directors & Officers Liability Practice Group and represents and consults with directors and officers, corporations, insurance companies, and law firms across the country. In addition to advising Boards and drafting most of the D&O insurance policies in the market, he has represented clients or served as an expert witness in many of the largest D&O claims for more than 30 years. He is co-author of Liability of Corporate Officers and Directors, a leading treatise on the topic, has published dozens of articles and speaks at more than 20 seminars a year on the subject.

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