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GIBSON DUNN



Securities Litigation Update

September 4, 2024

Securities Litigation 2024 Mid-Year Update

This update provides an overview of the major developments in federal and state securities litigation since our [Securities Litigation 2023 Year-End Update](#).

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Gibson Dunn's 2024 Mid-Year Update covers the following developments:

- We review the Supreme Court's decisions in *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, which recognizes that a suit under Rule 10b-5 cannot be based on pure omissions, and *SEC v. Jarkesy*, which limits the SEC's power to conduct administrative enforcement proceedings in certain cases. We also preview two cases that will address pleading standards and the nature of "materially misleading" statements under the PSLRA.

- We detail significant developments in Delaware corporate law, including a Delaware Supreme Court ruling on advance notice bylaws and a novel ruling on the duties of controlling stockholders when exercising stockholder-level voting power. We also provide updates on *Moelis* and *Tornetta v. Musk*.
- We discuss the SEC’s latest rule applicable to SPACs and its significance along with the fact-specific approach courts have taken in SPAC litigation.
- A growing number of lawsuits challenge public companies’ environmental, social, and governance (ESG) disclosures and policies. We survey recent developments in this space.
- Cryptocurrency saw noteworthy developments in private litigation and in actions by the SEC—which has been ramping up enforcement efforts. We discuss these developments along with court rulings and legislative efforts impacting transactions and compliance.
- We continue to monitor case law developments related to the Supreme Court’s 2019 decision, *Lorenzo v. SEC*, in which the Supreme Court found that even if the disseminator of a false statement did not “make” or draft that false statement within the meaning of Rule 10b-5(b), the disseminator may still be liable under Rule 10b-5(a) and (c) if they disseminate a false statement with intent to defraud.
- District courts continue to engage with defendants’ attempts to defeat or limit class certification by rebutting the *Basic* presumption of reliance with evidence that the alleged misstatements had no impact on the stock price. We review several of these opinions in Section VIII, Market Efficiency And “Price Impact” Cases.
- Finally, we address several other notable developments including the following: the Seventh Circuit outlining the procedure for reassessment of mootness fees paid to shareholder plaintiffs after a merger following voluntary dismissal of their suit; the Sixth Circuit joining the majority of circuits in holding that the bespeaks caution doctrine survives the PSLRA; the Ninth Circuit providing additional guidance on determining loss causation and alleged misstatements related to COVID-19; and the SEC’s finalization of amendments to Regulation S-P aimed at enhancing data protections.

I. Filing And Settlement Trends

A recent [NERA Economic Consulting \(NERA\)](#) study provides an overview of recent developments in federal securities litigation filings. This section highlights several notable trends.

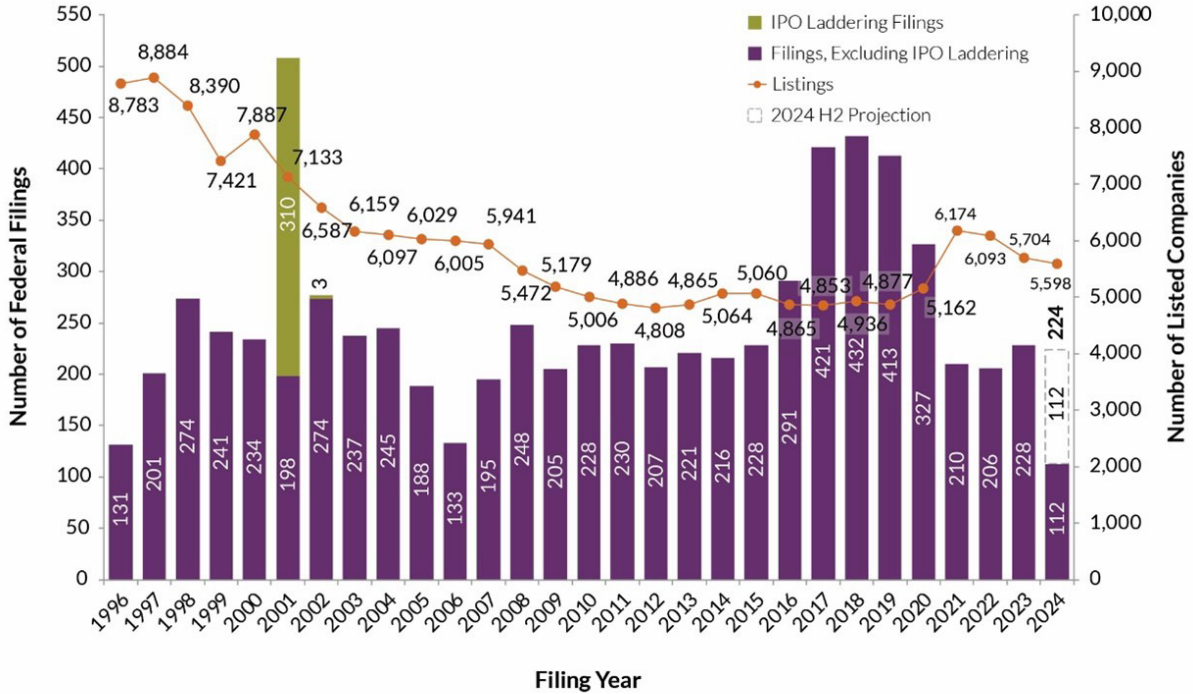
A. Filing Trends

Figure 1 below reflects the federal filing rates from 1996 through 2024. In the first half of 2024, 112 federal cases were filed. On an annualized basis, that number largely matches the number of federal filings in 2023, but it is considerably lower than in the peak years of 2017-2019. Note, however, that this figure does not include class action suits filed in state court or state court derivative suits, including those in the Delaware Court of Chancery.

Figure 1:



Figure 1. Federal Filings and Number of Companies Listed in the United States
January 1996–June 2024



Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2024 listings data are as of May 2024.

B. Mix Of Cases Filed In 2023

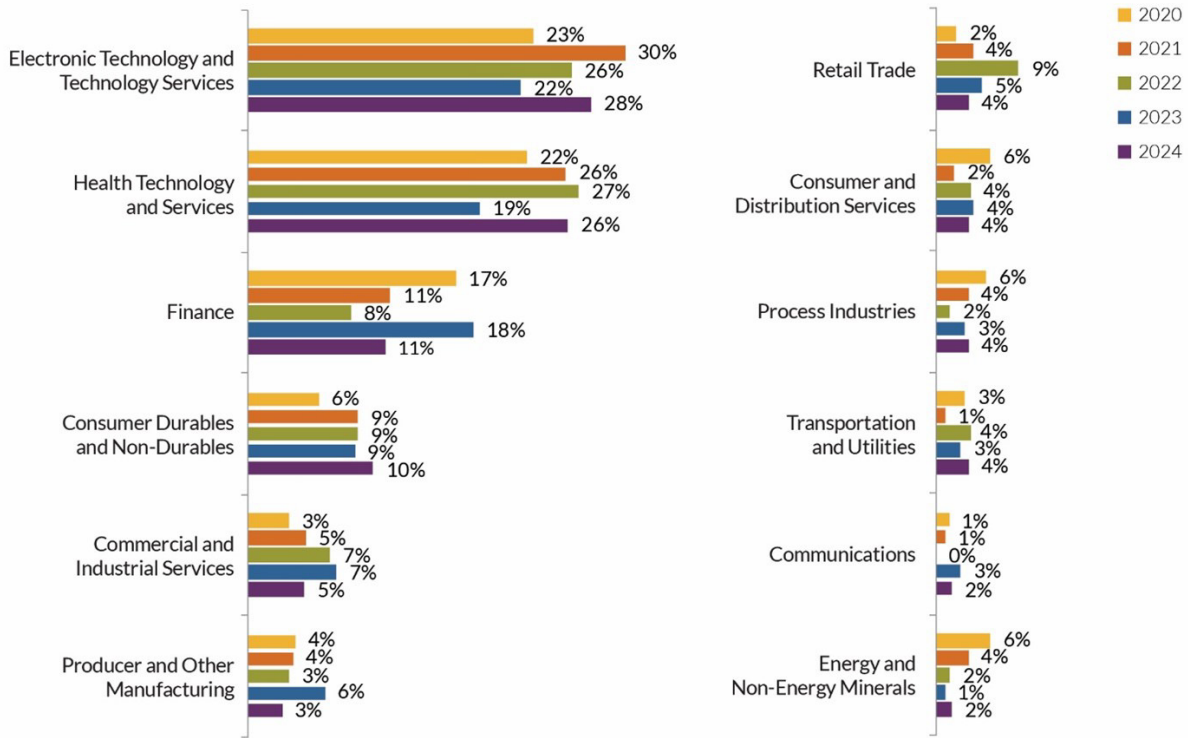
1. Filings By Industry Sector

As shown in Figure 2 below, the distribution of non-merger objections and non-crypto unregistered securities filings in the first half of 2024 varied somewhat from 2023. Notably, after a dip in 2023, the “Health and Technology Services” sector percentage returned to the percentages seen in 2021 and 2022. Similarly, the percentage of “Electronic Technology and Technology Services” filings increased in 2024, returning to levels seen in 2021 and 2022. Together, “Health and Technology Services” and “Electronic Technology and Technology Services” filings once again comprised over 50% of filings after dipping to 41% in 2023. Meanwhile, “Finance” sector filings decreased from 18% to 11%.

Figure 2:



Figure 3. Percentage of Filings by Sector and Year
 Excludes Merger Objections and Crypto Unregistered Securities
 January 2020–June 2024



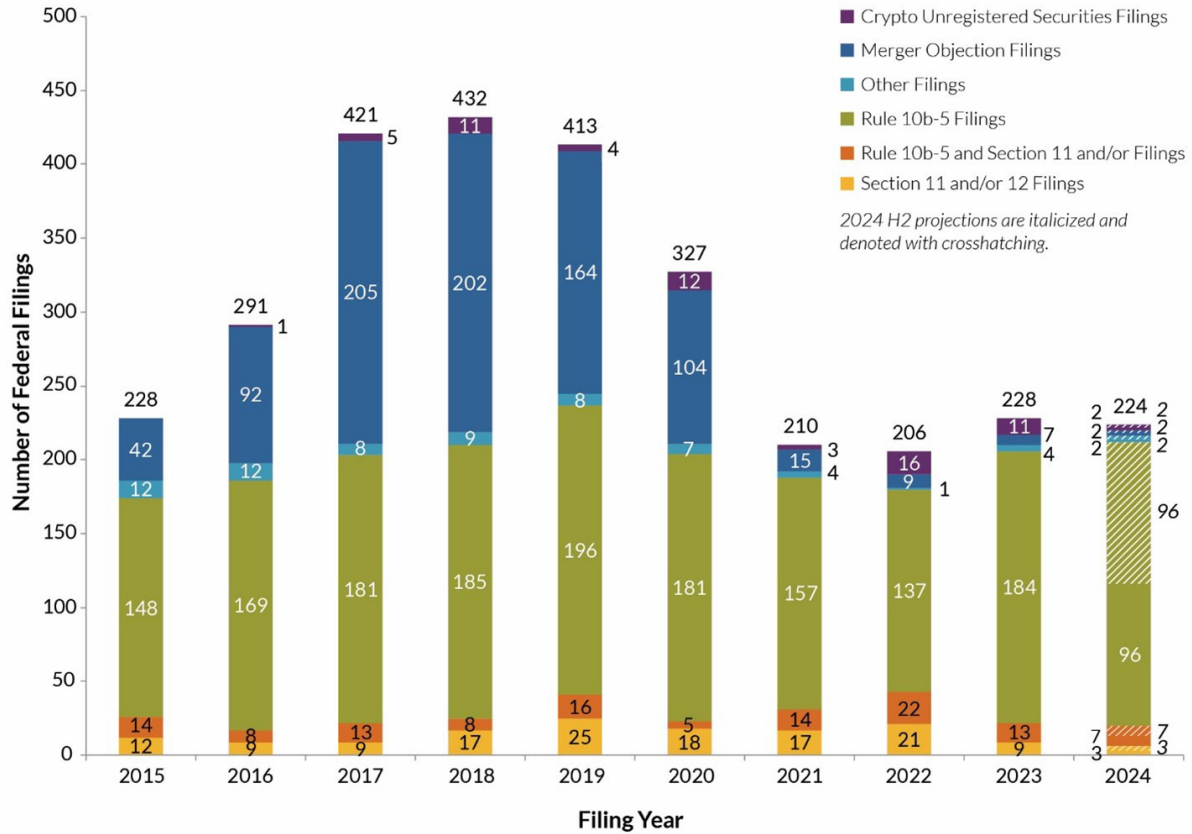
Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

2. Filings By Type

As shown in Figure 3 below, Rule 10b-5 filings make up the vast majority of federal filings so far this year. In fact, projecting out to a full year, filings of other types are slated to end up at their lowest levels in years.

Figure 3:

Figure 2. Federal Filings by Type
January 2015–June 2024

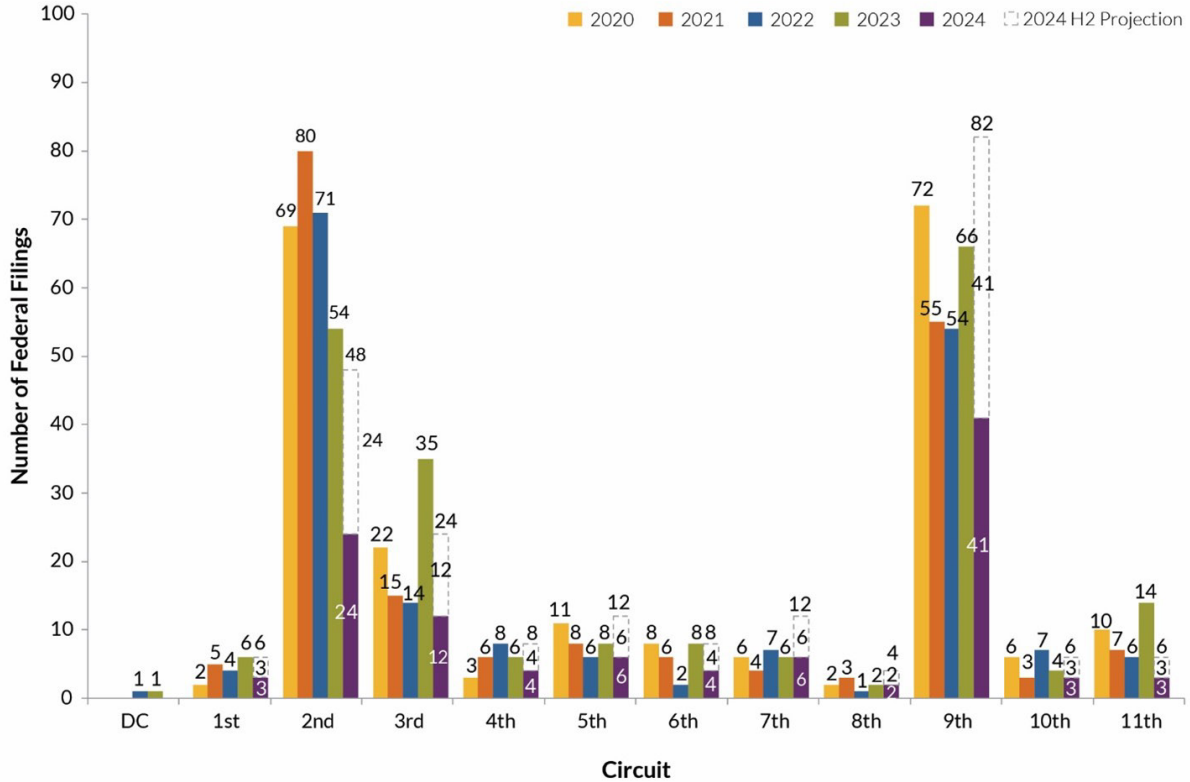


3. Filings By Circuit

Figure 4 provides insight into the distribution of federal filings by Circuit. Most filings occur in the Second and Ninth Circuits. Notably, the number of filings in the Second Circuit has been trending down since 2021. By contrast, the number of filings in the Ninth Circuit has stayed steady or increased over that same period.

Figure 4:

Figure 4. Federal Filings by Circuit and Year
 Excludes Merger Objections and Crypto Unregistered Securities
 January 2020–June 2024

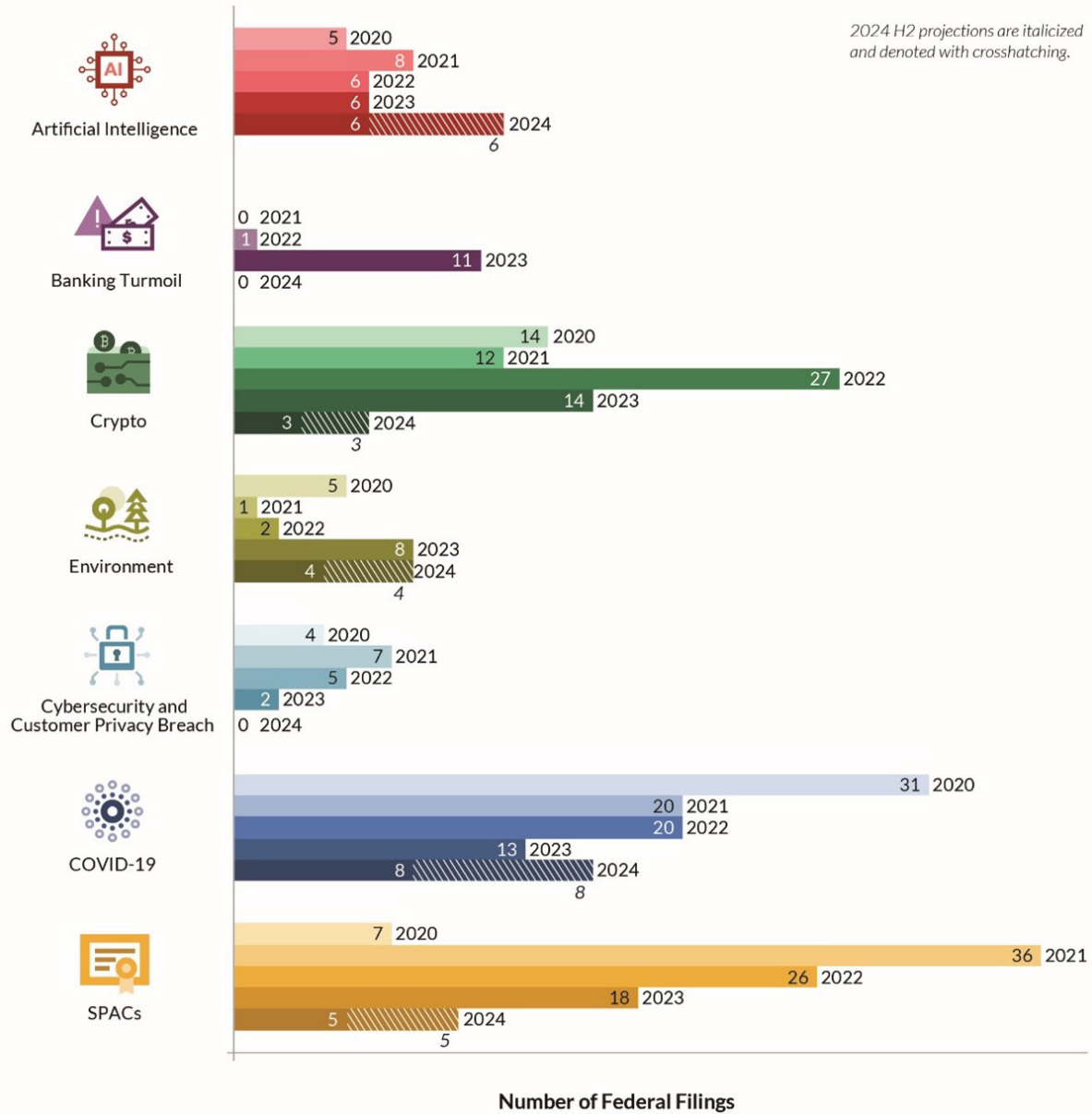


4. Event-Driven And Other Special Cases

Figure 5 illustrates trends in the number of event-driven and other special case filings since 2020. The number of Artificial Intelligence-related filings already equals the total number of such filings in 2023 and 2022. By contrast, SPAC and Cybersecurity and Customer Privacy Breach filings have decreased steadily since 2021. And after 11 such filings in 2023, zero Banking Turmoil cases have been filed this year.

Figure 5:

Figure 8. Event-Driven and Other Special Cases by Filing Year
January 2020–June 2024



C. Settlement Trends

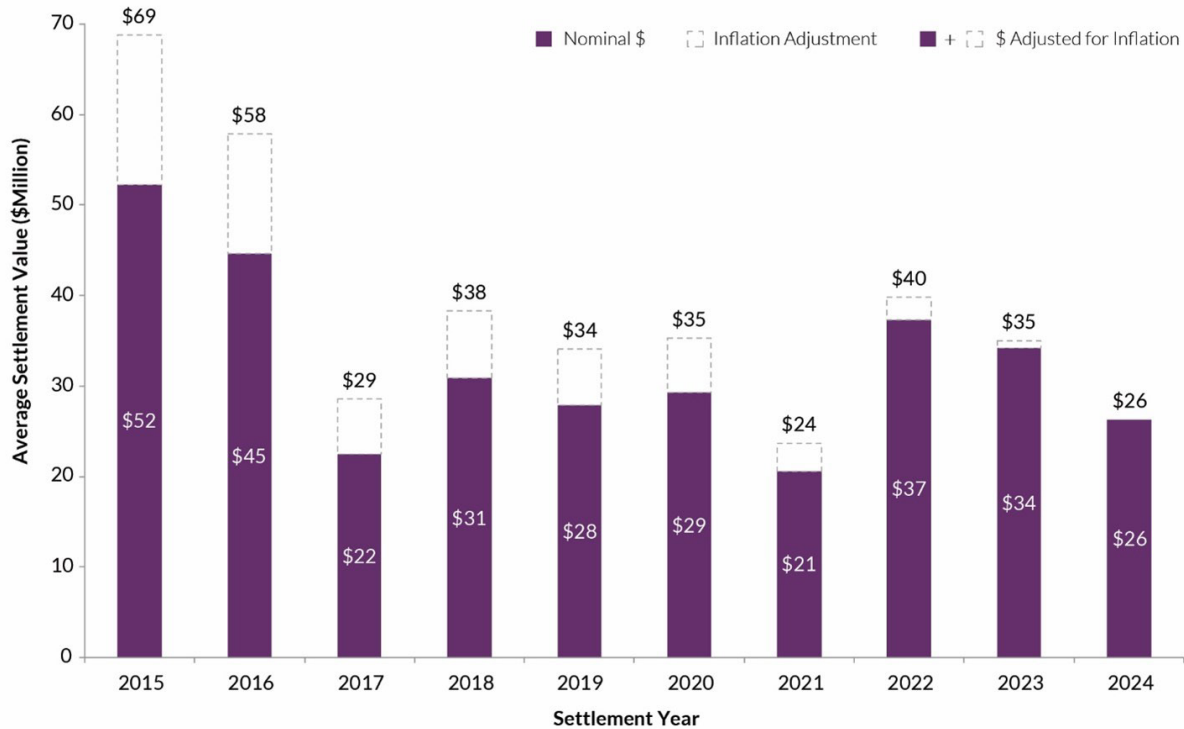
As reflected in Figure 6 below, the average settlement value so far in 2024 is \$26 million. That is a sizable drop from the past two years. If it remains at that level, it would be the second-lowest average settlement value on an inflation-adjusted basis in nearly a decade. (Note that the

average settlement value excludes merger-objection cases, crypto unregistered securities cases, and cases settling for more than \$1 billion or \$0 to the class.)

Figure 6:



Figure 13. **Average Settlement Value**
 Excludes Settlements of \$1 Billion or Higher, Merger Objections, Crypto Unregistered Securities,
 and Settlements for \$0 to the Class
 January 2015–June 2024

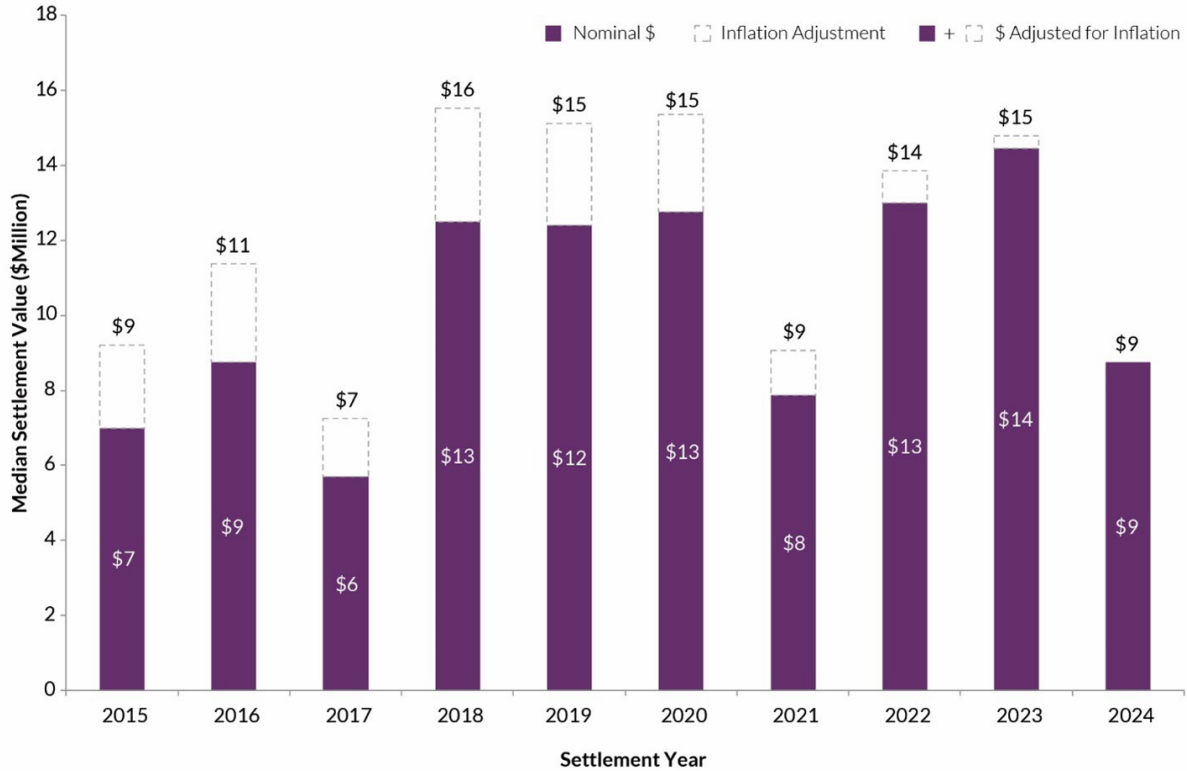


As for median settlement value, that value has likewise dropped noticeably from 2022 and 2023. (Note that median settlement value excludes settlements over \$1 billion, merger objection cases, crypto unregistered securities cases, and zero-dollar settlements.)

Figure 7:



Figure 14. **Median Settlement Value**
 Excludes Settlements of \$1 Billion or Higher, Merger Objections, Crypto Unregistered Securities,
 and Settlements for \$0 to the Class
 January 2015–June 2024



II. What To Watch For In The Supreme Court

A. Recent Supreme Court Decisions

1. *Macquarie Infrastructure Corp. v. Moab Partners, L.P.* – Rule 10b-5 Does Not Support Private Actions Based On Pure Omissions

On April 12, 2024, the Supreme Court unanimously decided *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, holding that an issuer of securities does not violate Exchange Act Section 10(b) or the SEC’s Rule 10b-5 by pure omission—that is, by mere nondisclosure of material information—unless that omission renders other, affirmative statements by the issuer misleading. 601 U.S. 257, 265 (2024).

Please click below to view the complete update on Gibson Dunn's website:

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