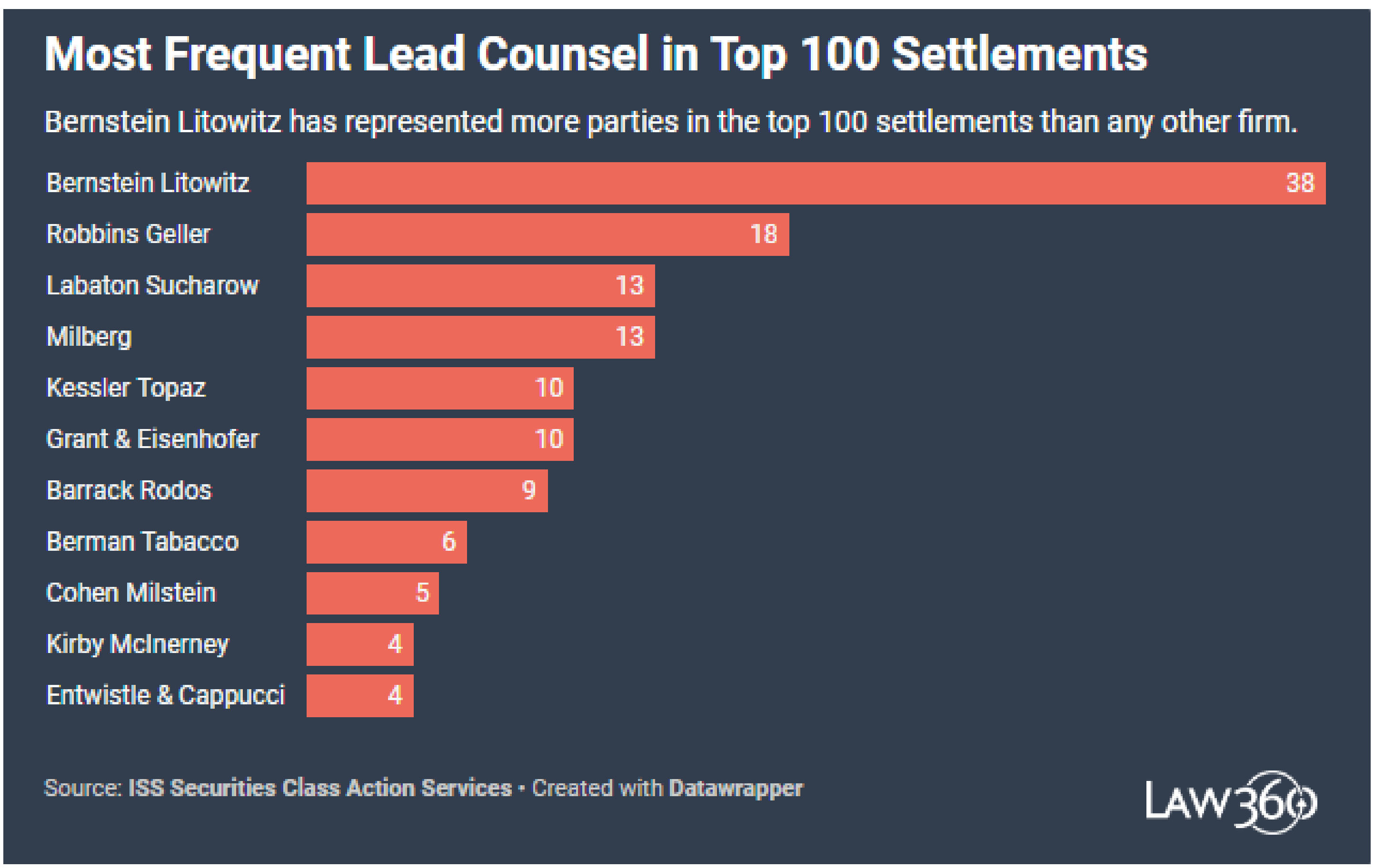
By Sarah Jarvis | March 2021 | www.lawdragon.com

Investor Settlements Held Steady In 2020 Despite Pandemic

Law360 (February 25, 2021, 9:50 PM EST)-- Investor deals remained steady last year despite the COVID-19 pandemic, according to recently released data, with four deals, led two apiece by Robbins Geller and Bernstein Litowitz, breaking into the top 100 largest settlements of all time.

The ISS Securities Class Action Services released a report on Wednesday ranking American Realty Capital Properties Inc. investors' $1.025 billion settlement and First Solar Inc. investors' $350 million settlement 14th and 48th, respectively, among the highest-value securities class action settlements filed in U.S. courts since the passage of the Private Securities Litigation Reform Act of 1995.

While those two deals were led by lead counsel Robbins Geller Rudman & Dowd LLP, the other two 2020 deals that cracked the top 100 were led by Bernstein Litowitz Berger & Grossmann LLP as lead counsel: Signet Jewelers Ltd. investors' $240 million settlement and SCANA Corp. investors' $192.5 million settlement, which came in at 73rd and 93rd, respectively, according to the report. All four cases included claims brought under the federal securities laws' main anti-fraud rule, known as Rule 10b-5.



The four additions to the list come after a lull in 2019 when just two approved settlements placed in the top 100, and the overall monetary resolutions of investor class claims took a dip as well. That year, ISS found that courts had signed off on 101 such shareholder deals worth a total of $3.17 billion. But the total settlement amount picked up a bit in 2020, with the report indicating that there were 99 approved monetary class action settlements in the U.S. amounting to more than $3.26 billion.

“The wheels of justice really continue to spin throughout the entire year,” said Jeffrey Lubitz, executive director of ISS Securities Class Action Services, in summing up securities litigation settlements in 2020.

The report indicated that while the first quarter of 2020 featured 18 settlements, the final three quarters during the pandemic averaged 27 settlements each. But Lubitz said that the total number of newly-filed cases was one area that felt the effects of the pandemic, noting that there were only 326 new federal securities cases in 2020, down 22% compared to 2019, which marked the first decrease since a much smaller drop between 2011 and 2012. From 2017 through 2019, investors on average filed 425 new federal cases per year, he said.

In state courts, the numbers also dropped significantly, with 75 new cases filed compared to a 2017-2019 average of 109.

“The number of newly filed cases in the United States dropped pretty dramatically last year, both in state and federal court,” Lubitz said, pointing out that the trend has continued into the first weeks of 2021 and may have an effect in the coming years.

While newly filed cases are still down this year, there have already been two settlements in 2021 that are large enough to crack the top 100 largest settlements list for the next annual report. One, a $1.21 billion settlement with Valeant Pharmaceuticals International, is the ninth-largest securities fraud settlement in the nation, while the other is social media giant Snap Inc.’s combined $187.5 million settlement, which includes both a federal and a state settlement.

Lubitz said that since the PSLRA went into effect in 1996, there have only been 16 settlements for $1 billion or more, including the Valeant settlement. He noted that the report covers traditional U.S. class action cases and settlements, and does not include antitrust litigation, which ISS tracks separately.

Lubitz also said that before the beginning of the pandemic, the average period between settlement anddisbursement date was 18 months. But based on a review of 30 random disbursements in 2020, thatperiod has dropped to 16 months. While the data doesn’t indicate the reasons for that drop, Lubitz saidthat anecdotally, administrators are becoming more efficient and are more motivated to close theseparts of the cases.

He added that event-driven litigation is a major driver of new cases and settlements, highlighting litigation brought in the wake of the #MeToo movement and cybersecurity breaches. But he said he wouldn’t be surprised if much of the pandemic-related securities litigation is dismissed in the months ahead.

“I think we’ll see more than the average dismissals occur for the COVID-19-related cases,” Lubitz said.

--Additional reporting by Jon Hill, Reenat Sinay, Alyssa Aquino, Emilie Ruscoe and Jeannie O’Sullivan.

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