

Corporate Finance/M&A - USA

Report shows continued ubiquity of stockholder M&A litigation

Contributed by **Ropes & Gray LLP**

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In early March Cornerstone Research issued its annual report on stockholder M&A litigation. The report concluded that stockholder litigation challenging public company transactions remains pervasive, with lawsuits filed in connection with 94% of transactions announced in 2013 that were valued at over \$100 million. The report also showed that multi-forum M&A litigation remains common, as 62% of stockholder challenges involved actions filed in multiple jurisdictions. However, the report detailed a substantial decrease in the number of cases filed in three jurisdictions, noting a decrease of approximately 50% in such cases over the past three years. This could be attributable to defendants' tactical responses – including the invocation of the Private Securities Litigation Reform Act discovery stay – to what had been a rising trend of stockholder plaintiffs filing parallel M&A actions in federal courts.

The report also concluded that – as practitioners are well aware – over 90% of stockholder M&A suits resolve pre-closing through non-monetary settlements. Only 2% of settlements reached in 2013 involved a monetary payment, as the vast majority of settlements included only the issuance of supplemental public disclosures and/or a modification of deal terms. The plaintiffs' attorneys' fees associated with such non-monetary settlements declined in 2013, with the average fee requested declining to \$1.1 million in 2013 from \$1.4 million in 2011 and 2012. Fee awards similarly declined, with plaintiffs receiving average awards of less than \$500,000. The Delaware Court of Chancery also appears to have been more active in reducing requested plaintiffs' fee awards, awarding less than the requested fees in almost 35% of settlements.⁽¹⁾

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Endnotes

(1) Olga Koumrian, "Shareholder Litigation Involving Mergers & Acquisitions", *Cornerstone Research Review of 2013 M&A Litigation (March 2014)*.

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