

# EXHIBIT 2

# CORNERSTONE RESEARCH

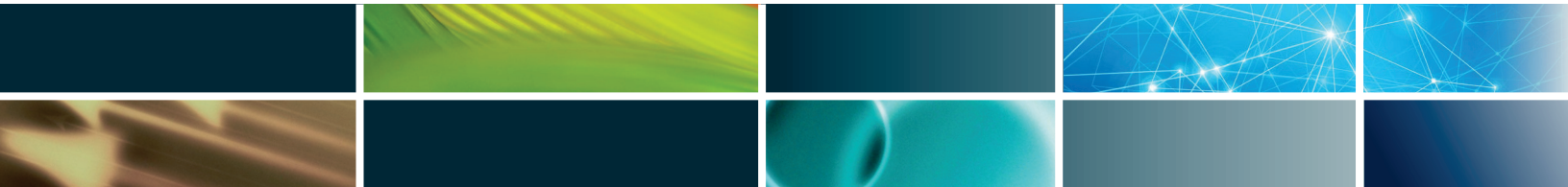
Economic and Financial Consulting and Expert Testimony

## Shareholder Litigation Involving Acquisitions of Public Companies

---

Review of 2015 and 1H 2016 M&A Litigation

Filings | Litigation Outcomes | Settlements



## Background

This report looks at litigation challenging M&A deals valued over \$100 million announced from 2007 through June 30, 2016, filed on behalf of shareholders of public target companies.

These lawsuits usually take the form of a class action. Plaintiff attorneys typically allege that the target's board of directors violated its fiduciary duties by conducting a flawed sales process that failed to maximize shareholder value. Common allegations include the failure to conduct a sufficiently competitive sale, the existence of restrictive deal protections that discouraged additional bids, and conflicts of interest, such as executive retention post-merger or change-of-control payments to executives.

Another typical allegation is that the target board failed to disclose enough information about the sale process and the financial advisor's valuation. However, recent decisions made by the Delaware Court of Chancery against "disclosure-only" settlements have shifted the rate and mix of shareholder challenges.

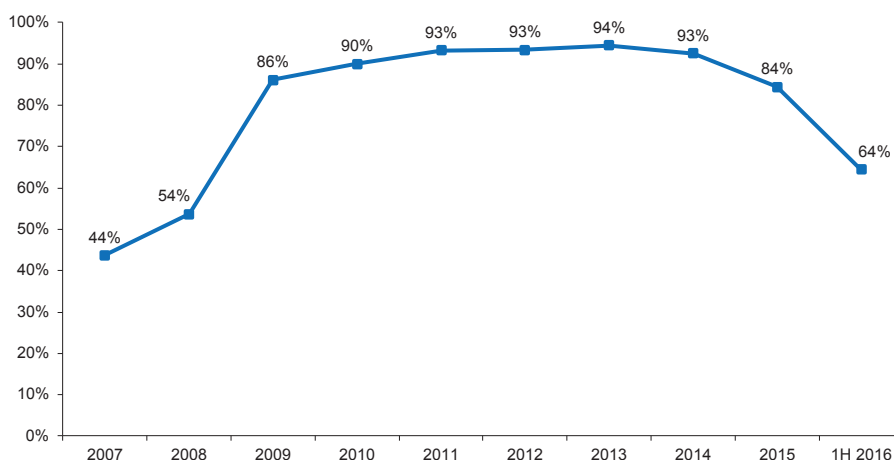
This report discusses lawsuit filings, outcomes, and settlement terms.

## HIGHLIGHTS

For the first time since 2009, the percentage of M&A deals valued over \$100 million that were subject to shareholder litigation declined to below 90 percent in 2015 and so far in 2016. The lower rate in late 2015 and the first half of 2016 may be due to the impact of the January 2016 *Trulia* ruling that diminished the acceptability of disclosure-only settlements. In addition, a smaller number of competing lawsuits were filed for the same deal and in fewer competing jurisdictions. Lawsuits were less likely to be filed in the Delaware Court of Chancery than in previous years.

- In 2015 and the first half of 2016, 84 and 64 percent of M&A deals valued over \$100 million were litigated, respectively. This is the first time since 2009 that the rate has dipped under 90 percent. (Figure 1)
- The average number of lawsuits per deal declined, from 4.6 in 2014 to 4.1 in 2015 and 2.9 in 1H 2016. (page 2)
- The majority of litigation for 2015 deals was filed in only one jurisdiction (65 percent). The same is true for the first half of 2016 (57 percent). (page 3)
- In 2014, 75 percent of lawsuits were resolved before deals closed. This compares to 57 percent in 2015 and 56 percent in 1H 2016. (page 4)
- While disclosure-only settlements are less likely to be approved by the Delaware Court of Chancery, it remains to be seen whether other venues will continue to grant them. Early anecdotal evidence indicates that it is possible that they will. This has led to cases being litigated with increasing frequency outside Delaware. (pages 4–5)

Figure 1: Percentage of M&A Deals Challenged by Shareholders (by deal year)



Source: Thomson Reuters SDC; SEC Filings

Note: Percentages have been rounded to the nearest whole number.

## FILINGS

### Most litigated deals of 2015 (by number of lawsuits)

EMC Corp./Dell Inc.	15
Entropic Communications Inc./ MaxLinear Inc.	13
Martha Stewart Living/ Sequential Brands Group Inc.	13
TECO Energy Inc./ Emera Inc.	12
Office Depot Inc./Staples Inc.	11
Broadcom Corp./ Avago Technologies Ltd.	11

### Most litigated deals of 1H 2016 (by number of lawsuits)

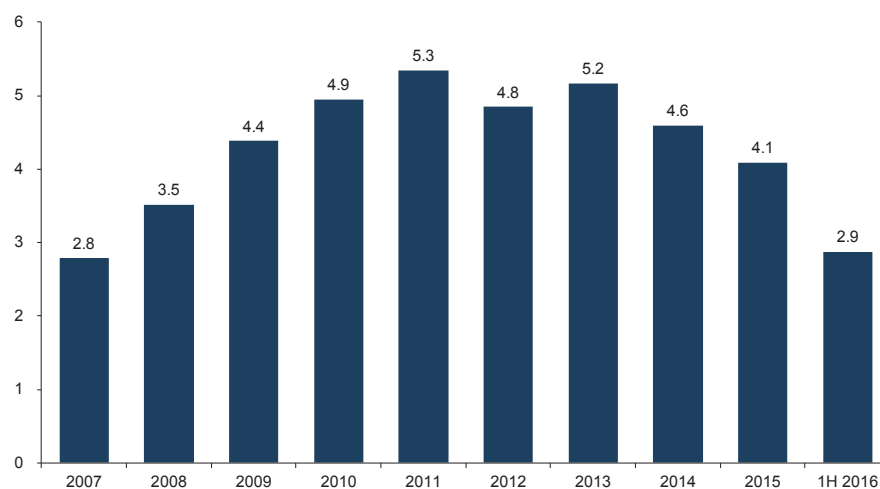
ITC Holdings Corp./ Fortis Inc.	7
Affymetrix Inc./ Thermo Fisher Scientific Inc.	7

### Top three in 2007–1H 2016

Genentech Inc. (2008)	30+
Dynegy Inc. (2010)	29
Dell Inc. (2013)	26

- The rate of M&A litigation has declined substantially since the Delaware Court of Chancery's decision in *Trulia*.
- Plaintiff attorneys filed lawsuits in 84 percent of all M&A deals announced in 2015 and valued over \$100 million. A total of 174 M&A deals had associated lawsuits in 2015.
- Lawsuits were filed in 64 percent of all M&A deals announced in 1H 2016 and valued over \$100 million. There were 47 M&A deals with associated lawsuits during the first half of the year.
- The average number of lawsuits per deal declined from 4.6 in 2014 to 4.1 and 2.9 in 2015 and 1H 2016, respectively (Figure 2).
- The number of deals with more than 10 filings decreased, from nine in 2014 to six in 2015. There were no deals with more than seven lawsuits filed in 1H 2016.
- Lawsuits were filed more slowly in 2015 and 1H 2016. During that period, the first lawsuit was filed an average of 22 days after the deal announcement, compared with 14 days in 2014. If this trend of increasing lag time continues, the 64 percent litigation rate seen in 1H 2016 may rise over time as these lawsuits are filed.

Figure 2: **Average Number of Lawsuits per M&A Deal  
(by deal year)**



Source: Thomson Reuters SDC; SEC Filings; Dockets

## JURISDICTIONS

### Most active state courts 2015 (by number of deals litigated)

Delaware	91
California	22
Maryland	10
Florida	9
Texas	6

### Most active state courts 1H 2016 (by number of deals litigated)

California	10
Delaware	10
New Jersey	4
Michigan	3
North Carolina	3
Pennsylvania	3

- Recent trends indicate that the Delaware Court of Chancery is becoming less common as a filing destination. This is likely due to the impact of the *Trulia* decision. The majority of M&A litigation in 2015 and 1H 2016 was filed in only one venue, continuing a trend that began in 2014 (Figure 3).
- For 2015 deals, 65 percent of M&A litigation was filed in one jurisdiction, with only 5 percent of the deals challenged in three or more courts. In the first half of 2016, the respective figures are 57 percent and 9 percent.
- Plaintiffs filed in Delaware for 61 percent of the litigated deals over the first three quarters of 2015 but only 26 percent of litigated deals in 4Q 2015 and 1H 2016.
- For litigation in which the acquired company was incorporated in Delaware, plaintiffs filed in Delaware for 74 percent of litigated deals in 2015. In 1H 2016, this rate was 36 percent. (Figure 4)

Figure 3: **Number of Jurisdictions per M&A Deal (by deal year)**

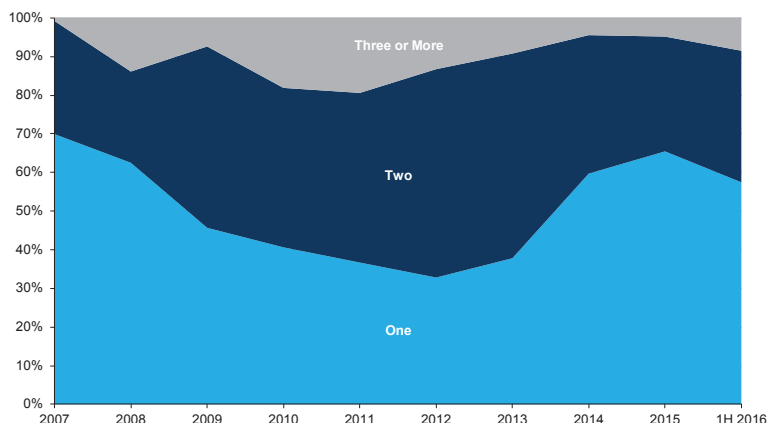
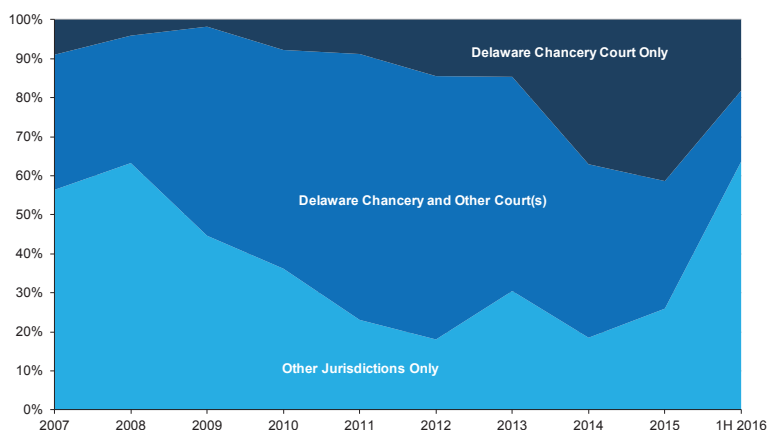


Figure 4: **Jurisdictions for Acquisitions of Companies Incorporated in Delaware (by deal year)**



Source: Thomson Reuters SDC; SEC Filings

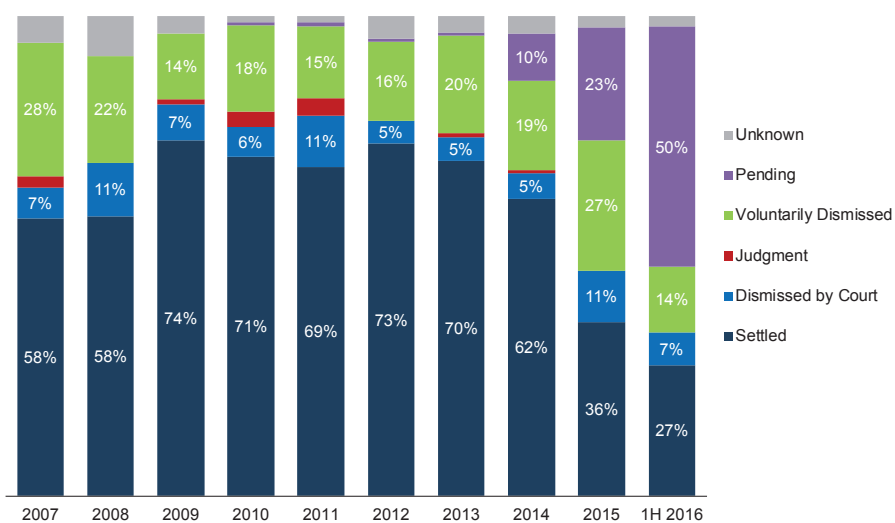
## LITIGATION OUTCOMES

### Percentage of M&A deals for which litigation was resolved before closing (by deal year)

2007	65%
2008	54%
2009	78%
2010	74%
2011	74%
2012	78%
2013	74%
2014	75%
2015	57%
1H 2016	56%

- From 2009 to 2014, between 74 and 78 percent of M&A litigation was resolved before the deal closed. This figure declined to 57 percent in 2015 and to 56 percent in 1H 2016. This is potentially a result of the increased difficulty in obtaining disclosure-only settlements.
- Unlike prior years, settlements in 2015 accounted for less than half of all litigation outcomes (Figure 5). These rates, particularly the 1H 2016 figure, may increase as more pending cases are resolved.
- Historically, of litigation that was resolved before deal closing, approximately 80 to 90 percent settled, and the remainder was either withdrawn by plaintiffs or dismissed by courts. In cases for which litigation was resolved after a merger closing, only 6 to 21 percent reached a settlement; the majority was either dropped by plaintiffs or dismissed by the courts.

Figure 5: Litigation Outcomes for All M&A Deals (by deal year)



Source: Thomson Reuters SDC; SEC Filings; Dockets

## SETTLEMENTS

### Monetary settlements 2015 and 1H 2016 (Dollars in Millions)

Dole Food Co. (2013)	\$148.2
PriMedia Inc. (2011)	\$39.0
Bluegreen Corp. (2011)	\$36.5
Globe Specialty Metals Inc. (2015)	\$32.5
Hot Topic Inc. (2013)	\$14.9
Prospect Medical Holdings Inc. (2010)	\$6.5

- Monetary consideration paid to shareholders has remained relatively rare—there were only a handful of monetary awards and settlements reached in 2015 and 1H 2016.
- The short-term reaction following the *Trulia* decision indicates both a lower rate of merger litigation and a lower share of such litigation in the Delaware Court of Chancery. It remains to be seen whether such shifts are sustainable. Over the next several months, courts in other jurisdictions will have the opportunity to either adopt or disregard the *Trulia* standard for disclosure-only settlements. If the *Trulia* standard becomes universal, the share of merger litigation in Delaware may revert to historical levels.
- To date, a small number of disclosure-only settlements have been approved in various state courts post-*Trulia* in cases where the settlement was reached before the *Trulia* decision. It is not yet clear whether such approvals will continue to occur in cases where the settlement was reached after the *Trulia* decision.
- As more post-*Trulia* cases are resolved, a future report will focus on settlements and plaintiff attorney fees.

The views expressed in this report are solely those of the author, who is responsible for the content, and do not necessarily represent the views of Cornerstone Research.

Please direct any questions, comments, or requests for information to Ravi Sinha. The author requests that you reference Cornerstone Research in any reprint of the tables or figures included in this study.

#### ABOUT THE AUTHOR

##### **Ravi Sinha**

M.B.A., The Wharton School, University of Pennsylvania  
B.A., University of California, Berkeley

415.229.8194  
rsinha@cornerstone.com

Ravi Sinha, a principal of Cornerstone Research, has more than 10 years of experience working with clients and experts to address complex financial and valuation issues. He has analyzed market efficiency, class certification, valuation, and aggregate damages across a variety of matters involving debt, equity, and derivative securities. Mr. Sinha has worked on a variety of merger and acquisition matters. He is experienced in all phases of litigation, including deposition, mediation, and trial. He has managed large case teams and has worked with multiple experts.

#### ABOUT CORNERSTONE RESEARCH

Cornerstone Research provides economic and financial consulting and expert testimony in all phases of complex litigation and regulatory proceedings. The firm works with an extensive network of prominent faculty and industry practitioners to identify the best-qualified expert for each assignment. Cornerstone Research has earned a reputation for consistent high quality and effectiveness by delivering rigorous, state-of-the-art analysis for over 25 years. The firm has 600 staff and offices in Boston, Chicago, London, Los Angeles, New York, San Francisco, Silicon Valley, and Washington.

[www.cornerstone.com](http://www.cornerstone.com)

[Twitter at @Cornerstone\\_Res](https://twitter.com/Cornerstone_Res)



**Boston**

617.927.3000

**Chicago**

312.345.7300

**London**

+44.20.3655.0900

**Los Angeles**

213.553.2500

**New York**

212.605.5000

**San Francisco**

415.229.8100

**Silicon Valley**

650.853.1660

**Washington**

202.912.8900

[www.cornerstone.com](http://www.cornerstone.com)

