

Opt-Outs More Likely In Large Securities Settlements: Report

By Martin O'Sullivan

Law360, New York (October 6, 2016, 1:47 PM EDT) -- Securities class action settlements above the half-billion dollar mark are more likely to see plaintiffs opt out and pursue separate litigation, according to a report released Thursday. The report by Cornerstone Research and Latham & Watkins LLP, which updates the "first ever" quantitative analysis of the characteristics of opt-out securities cases, found that between 2012-2014, 75 percent of securities class actions with settlements of \$500 million or more saw at least one opt-out case compared to 4 percent of settlements below that threshold. Institutional investors, such as pension funds and hedge funds, were the most likely to opt out of the larger settlements, according to the

Building on the previous report, securities class actions between 1996 and 2014 saw opt-out cases in 58 percent of settlements above \$500 million, compared to 3 percent below that mark.

"Based on our analysis of 19 years of data, it appears that defendants need to recognize the potential for opt-out cases in securities class actions, particularly in larger settlements," said Cornerstone Research Vice President Amir Rozen.

For plaintiffs, they should be wary of increased legal costs in bringing opt-out cases, the report said, and may not wish to do so unless their losses were large enough to justify the costs, the report said.

According to Latham & Watkins partner Christopher Harris, the report showed the impact of the Second Circuit's 2013 ruling in *Police & Fire Ret. Sys. v. IndyMac MBS Inc.*, which said that the statute of repose for individual securities claims could not be tolled.

Six investment funds opted out of a \$725 million class action settlement over an alleged market division scheme by American International Group Inc., but their subsequent suit was dismissed in part due to IndyMac, the report said.

SRM Global Master Fund LP saw its \$200 million opt-out suit tossed due to IndyMac after it opted out of a \$275 million settlement related to Bear Stearns' collapse, according to the report.

The findings of the report update are based on 10 opt-out cases culled from 186 publicly available securities class action settlements between Jan. 1, 2012, and Dec. 31, 2014. The overall database now encompasses 48 opt-out cases from 1,458 securities class action settlements between 1996 and 2014.

There has been no "discernable increase" in opt-outs over time, with the number of opt-out cases and their percentage in relation to settlements fluctuating during the overall period, the report said.



Christopher Harris