

17th Annual D&O Insurance ExecuSummit

D&O Claims Trends

**It's good to go first
... or second!**

Tuesday May 23, 2023

D&O Claim Trends

Session Speakers

Phil Norton, Ph.D. (Moderator)
Chairman, Gallagher Management Liability Practice

Vincent G. Caracciolo
Managing Director, National Claims and Coverage Advocacy Leader
EPIC Insurance Brokers & Consultants

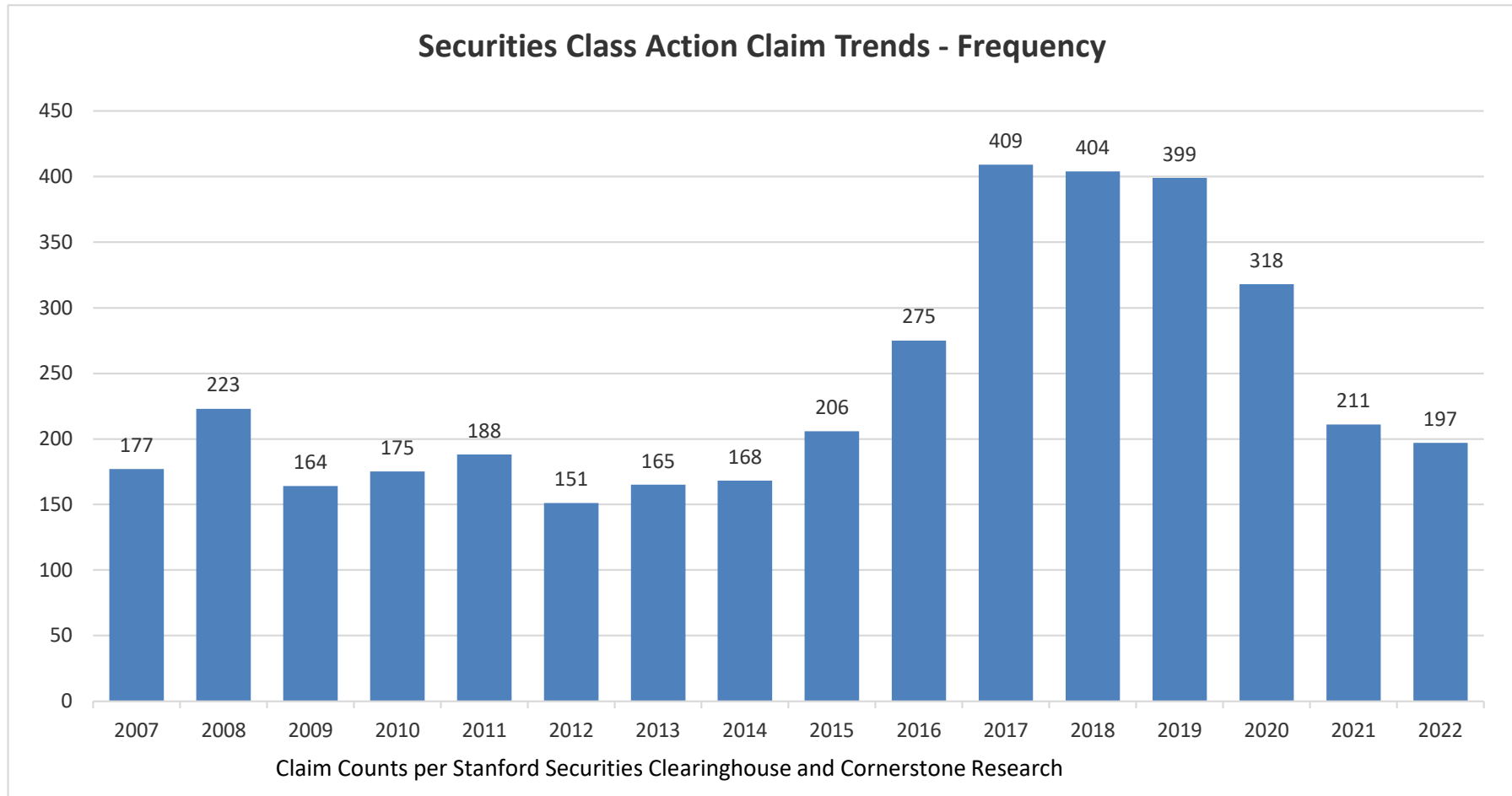
Richard Ferrigno
Senior Technical Claims Specialist. Argo Group US

Kieran Hughes, Executive Risk Advisors
Senior Vice President – Senior Claims Counsel, McGriff

Emil Soskin, Esq.
Director of Coverage, Management Liability & Specialty, Nationwide

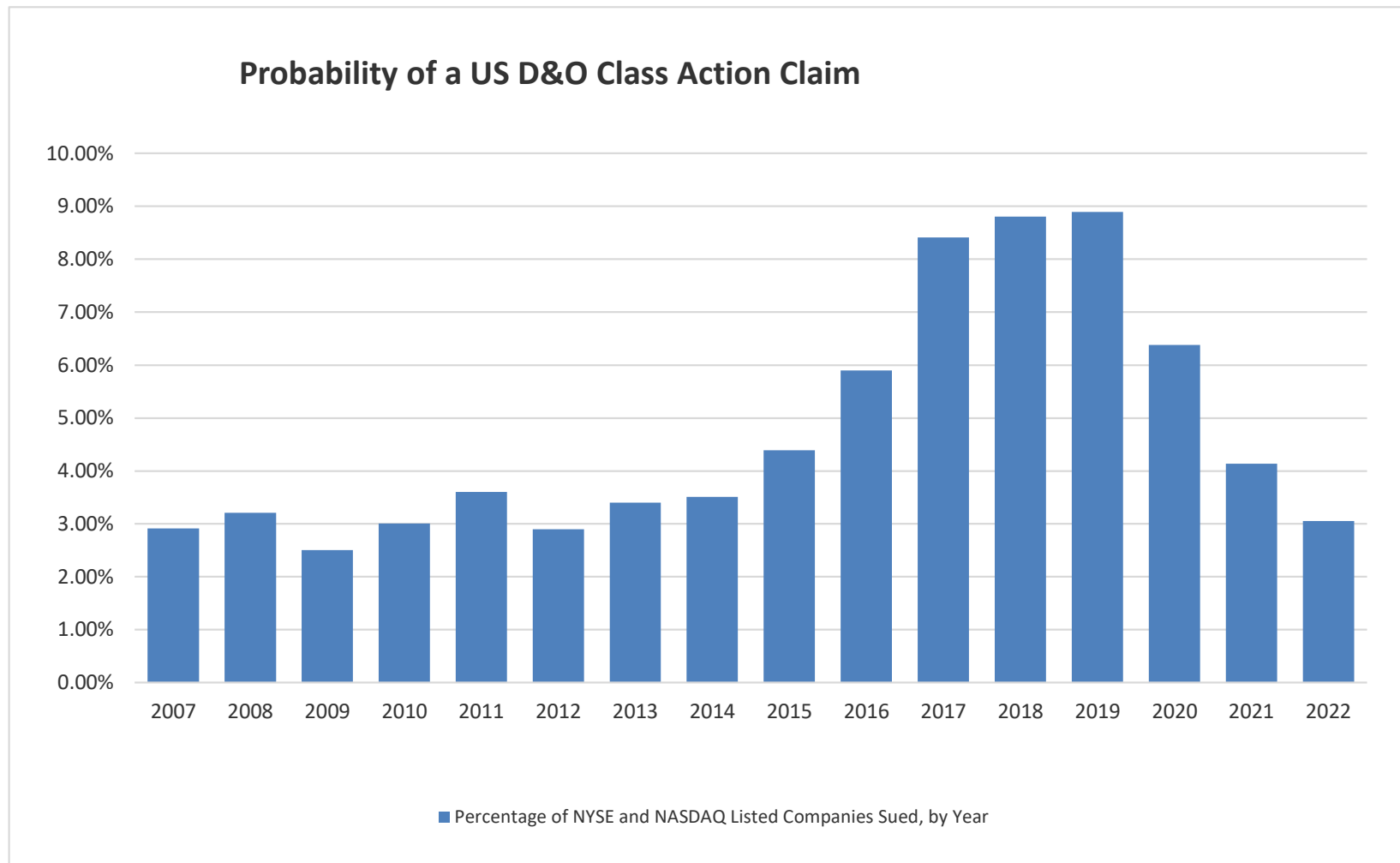
Claims Trends: Public D&O SCAs

Securities Class Action (SCA) Filings



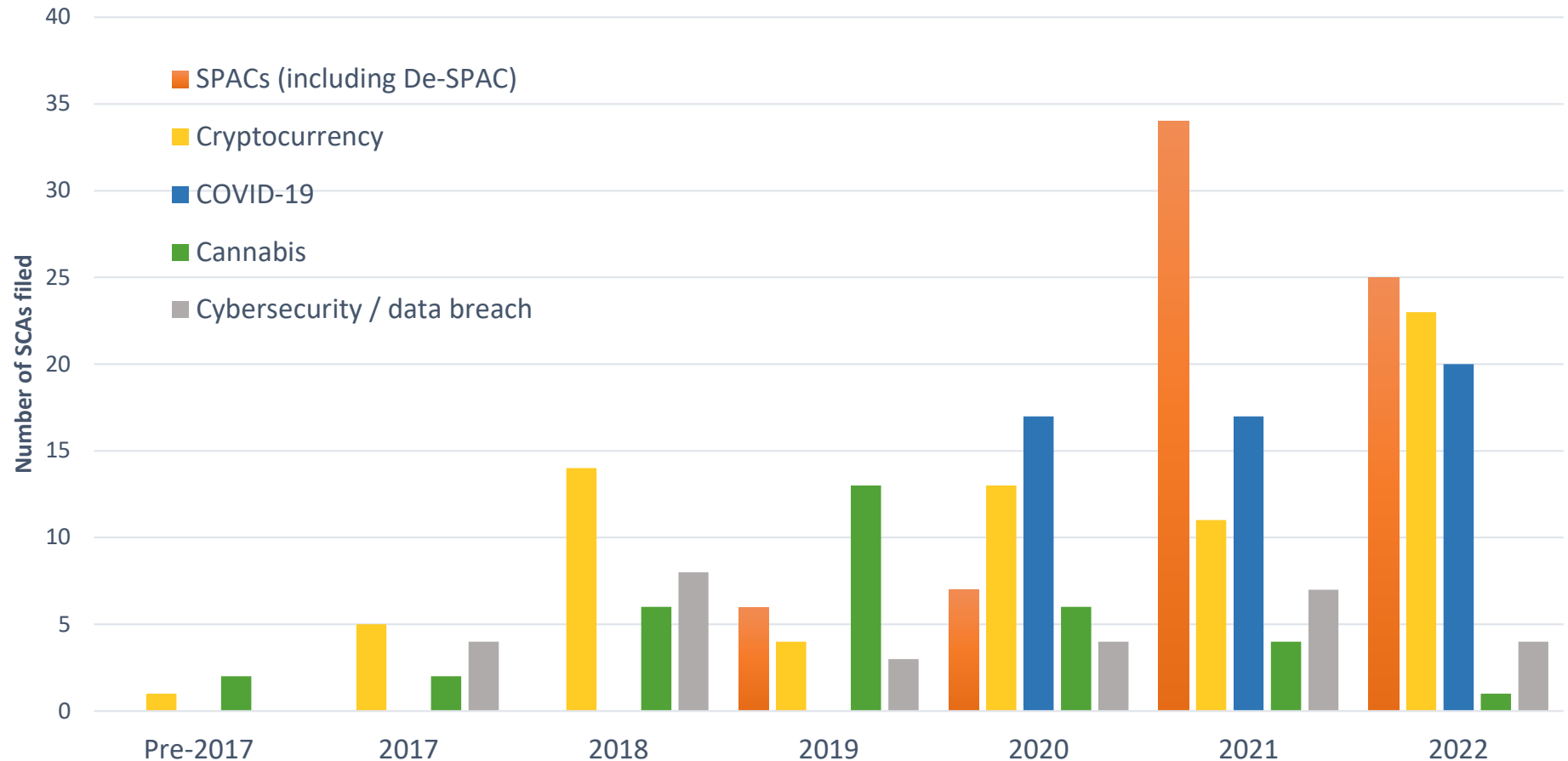
Claims Trends: Prob(D&O SCA)

Securities Class Action (SCA) Filings per listed companies on NYSE or NASDAQ



Event-Driven Litigation Remains Pervasive

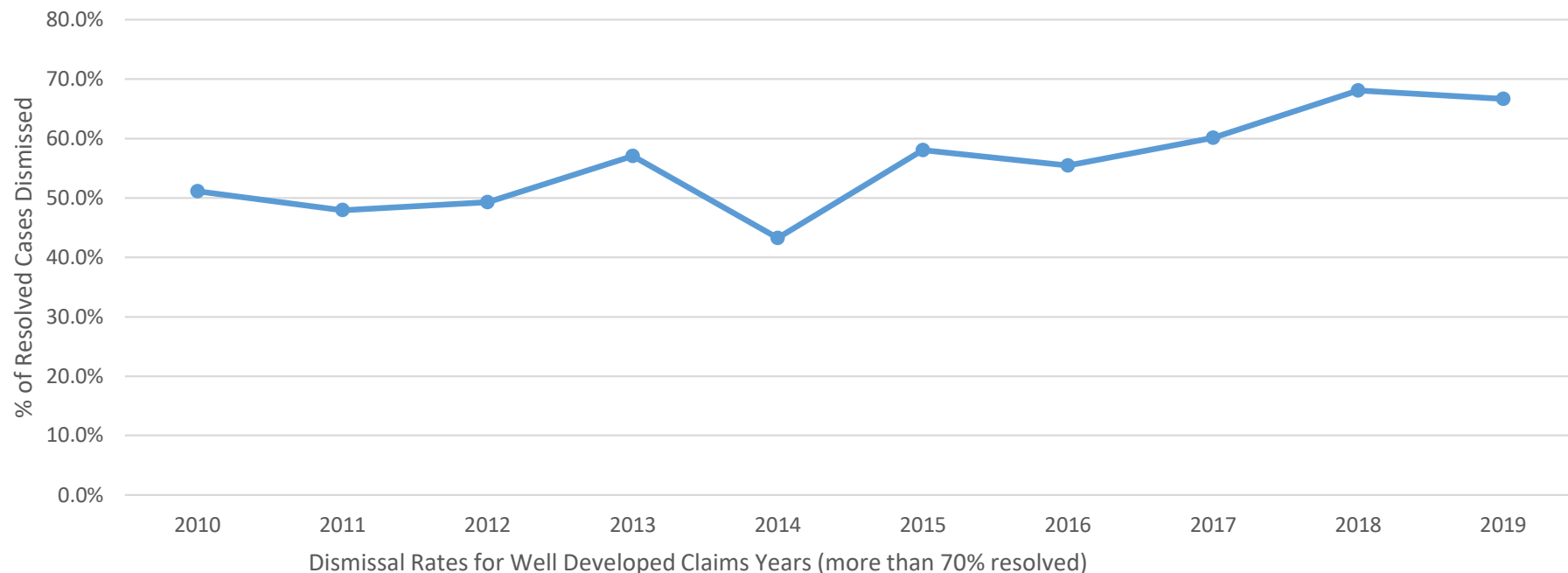
Trending Types of SCAs



Claim Dismissals Alleviating Pipeline

Claims Trends: Public D&O Dismissal Rates Remain High

Dismissal Rate for Core Filings



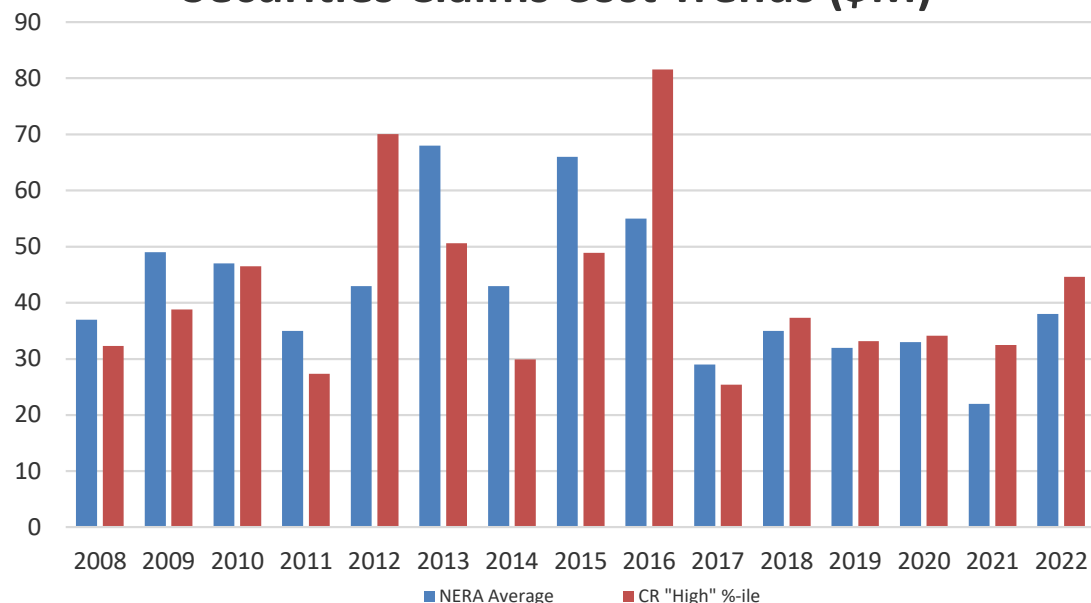
Merger Objection Filings recently showing 90% Dismissal Rate

- Courts have expressed disdain for “disclosure-only” cases featuring “deal tax” plaintiff fees.
- Class action filings are now relatively rare; plaintiff attorneys pursuing single plaintiff actions.

D&O Claim Severity gets interesting

Claims trends - Public D&O (SCA costs); and Large Settlements in 2022

Securities Claims Cost Trends (\$M)



Both NERA and Cornerstone Research claim severity data show friendlier average cost over the last 6 years.

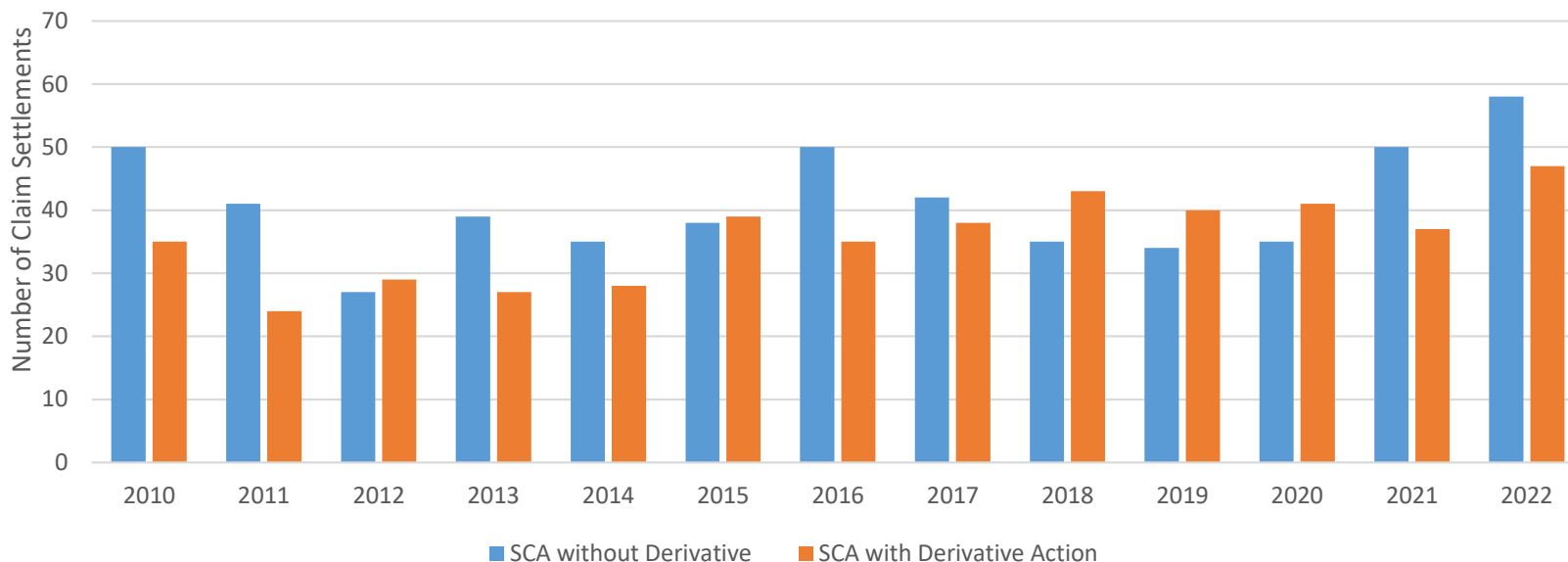
Sample Mega D&O Settlements - 2022

COMPANY	VALUE
Twitter	\$810 million
Teva Pharmaceutical Industries	\$420 million
Renren	\$300 million
First Energy	\$180 million
Luckin Coffee	\$175 million
Blackberry Limited	\$165 million
Granite Construction	\$129 million
Cardinal Health	\$124 million
Altria Group	\$117 million
Walgreen Co	\$105 million
Novo Nordisk	\$100 million
Stamps.com	\$100 million
NCI Building Systems	\$100 million

Note that 5 of these 13 Mega claims settled in 2022 were derivative actions. The total is likely a record. 2016 was the last similarly tough year.

Claim Trends – Public D&O Derivative Actions

Trend for SCAs with Derivative Actions



"from 2012 to 2020, the median settlement for cases with an accompanying

derivative action was nearly 45% higher than for cases without a derivative action"

In 2022, the median settlement cost was 28% higher if a parallel derivative action (\$14.1M vs \$11M)

The proportion of SCAs with an accompanying derivative actions in 2022 was slightly less than prior 13 years average. (44.8% vs 46.3%)

Transition to Update on Derivative Actions

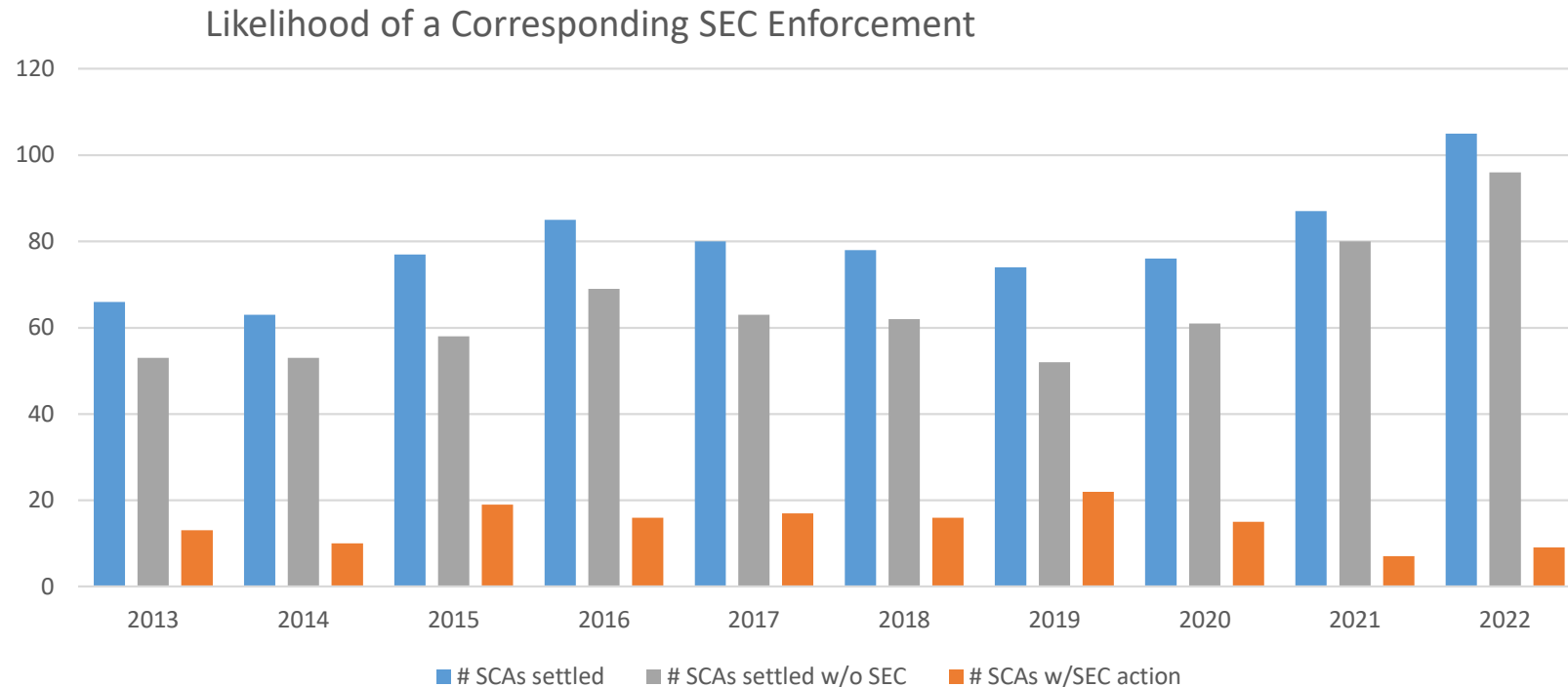
Sample of 20 D&O Derivative Actions since 2014

<u>Company</u>	<u>Settlement (in \$millions)</u>	<u>Resolved</u>
Wells Fargo	388	2020
Alphabet	310	2020
Renren	300	2022
VAREIT / (formerly A.R.C.P.)	287	2020
Activision Blizzard	275	2014
Boeing	238	2021
First Energy	180	2022
McKesson	175	2020
Freeport-McMoran	138	2015
Cardinal Health	124	2022
Altria Group	117	2022
NCI Building Systems	100	2022
Twenty-First Century Fox	90	2017
PG&E Corp	90	2017
Wynn Resorts	90	2020
L Brands	90	2021
HSBC	73	2020
Community Health	60	2017
Tesla	60	2020
New Senior Investment Gp	53	2019

Richard and Kieran will elaborate on Derivative actions with an update on key cases, shifts in the Caremark standard, Delaware Chancery stance, and much more!

Transition to SEC and other Regulatory Exposures

Did you know: almost 20% of SCAs have corresponding SEC Enforcement claims?



Vin and Emil have a discussion of this and much more on their agenda

A FEW REGULATORY EXPOSURES TO CONSIDER ... *the tip of an iceberg?*



SECURITIES EXCHANGE COMMISSION: RECENT ENFORCEMENT AND EXAMINATION PRIORITIES



2022 ENFORCEMENT HIGHLIGHTS

Penalties, Undertakings and Admissions; Increased use of Sweeps and Analytics, Cryptocurrency, Climate and ESG; Insider trading



2023 EXAM PRIORITIES

ESG, cryptocurrency, cyber and information security and emerging financial technologies, broker dealers and RIAs to Private funds , Registered Investment Companies, Standards of Conduct ...

REGULATORY ACTIVITY ... and potential Insurance Implications

Analysis may include considerations of types of ...



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Questions?

Thank You for
attending our Claims
Trends Panel!