

Developments on the Intersection of D&O and EPL



Moderator:

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Panelists:

Dove A.E. Burns, Equity Partner, Obermayer

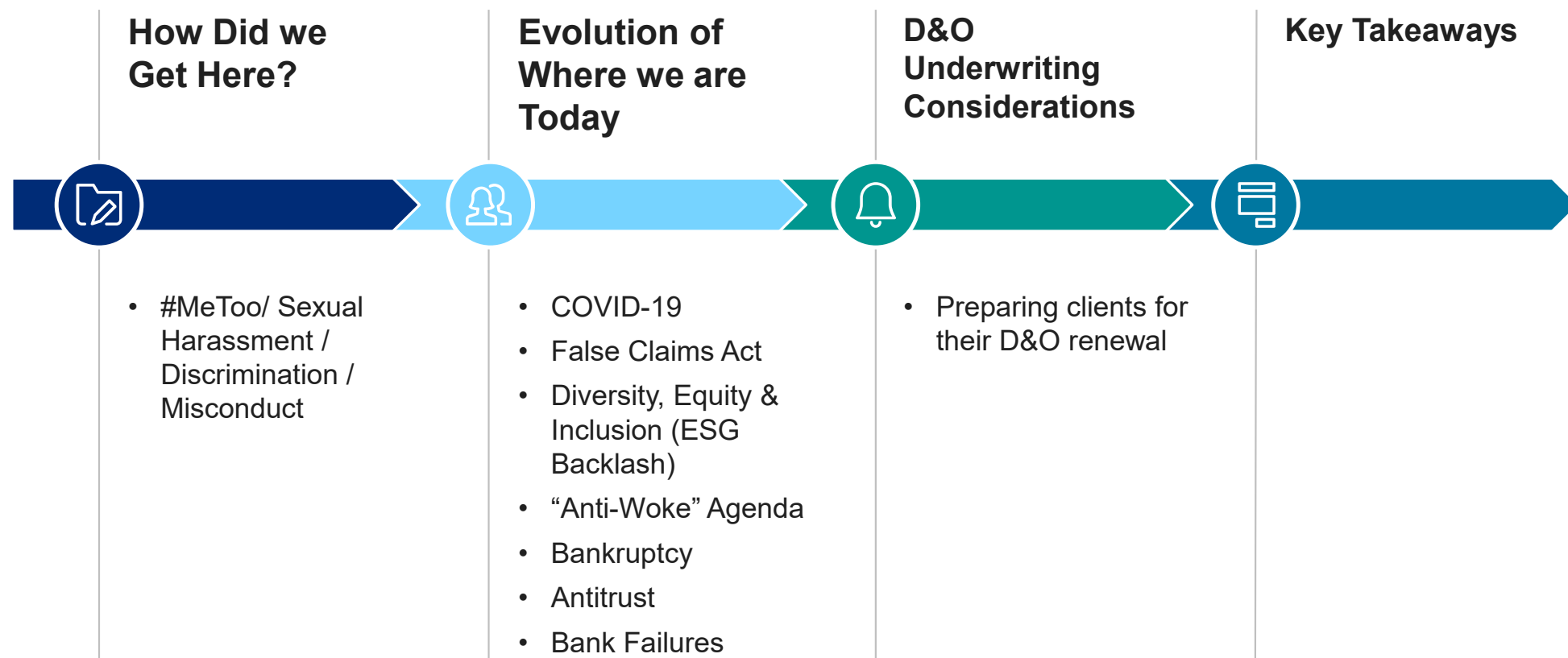
Marisa DeMartini, Vice President, Management Liability Claims Manager, Ascot Group

***The opinions and positions expressed in this presentation are the presenters' own.**

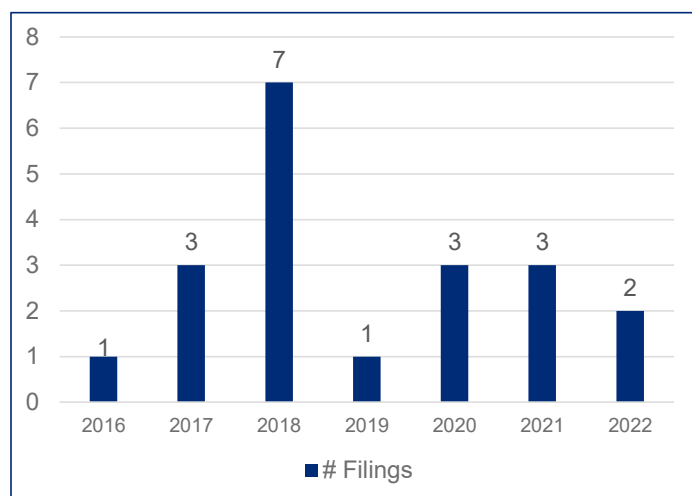


The Intersection of D&O and EPL

Topics

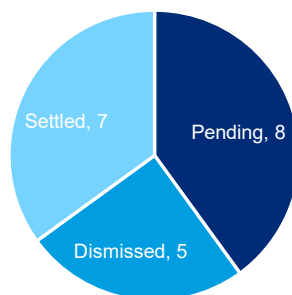


Selected Sexual Harassment / Discrimination / Misconduct Securities Claims (as of 3/31/23)



20 Events Tracked

- 8 SCA only
- 10 Derivative Only
- 2 SCA and Derivative



■ Pending ■ Dismissed ■ Settled

Average Settlement: \$119 million

SETTLEMENTS:

1. CBS Corp (SCA) - \$14.7 million (Derivative still pending)
2. Google (Alphabet) (Derivative) - \$310 million
3. Wynn Resorts (Derivative) - \$41 million
4. L Brands (Derivative) - \$90 million
5. 21st Century Fox (Derivative) - \$90 million
6. Pinterest (Derivative) - \$50 million

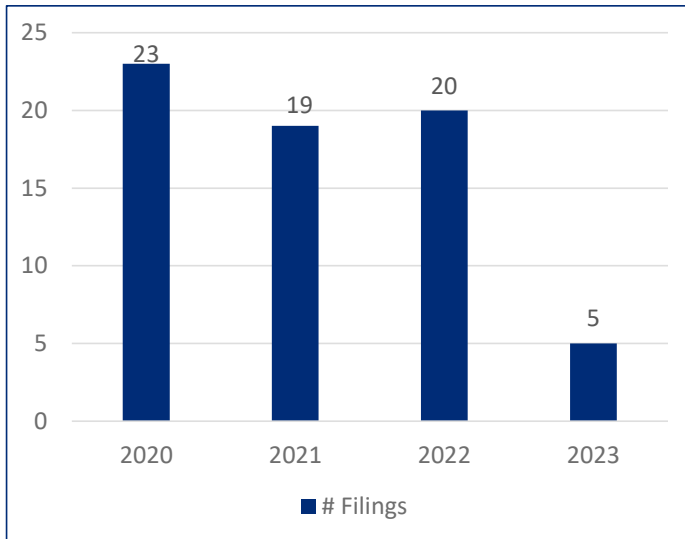
It's not just public companies:

- The Weinstein Company
- Michigan State University

Four Legal Theories for D&O Claims Arising from Claims of Sexual Misconduct:

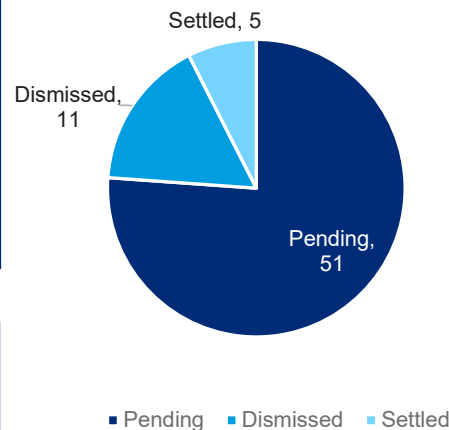
- Corporate officials breach duties of care and loyalty when they engage in sexual misconduct putting resources and reputation at risk
- Officials failed to monitor harassment making them liable under a Caremark theory
- Corporate officials turn blind eye or enable harassment to continue creating liability for breach of duty of care or loyalty
- Official and their organization violated securities laws by making misleading statements about workplace sexual misconduct

Selected COVID-19 Securities Claims



67 Events Tracked

- 57 SCA only
- 2 Derivative Only
- 8 SCA and Derivative



Average Settlement: \$13.7 million

SETTLEMENTS:

1. SCWorx - \$3.3 million
2. Vaxart - \$12 million
3. Inovio - \$44 million
4. Universal Health Services - \$925,000 – plaintiff fees only as non-cash settlement.
5. Chembio - \$8.1 million

Categories of COVID-19 Claims:

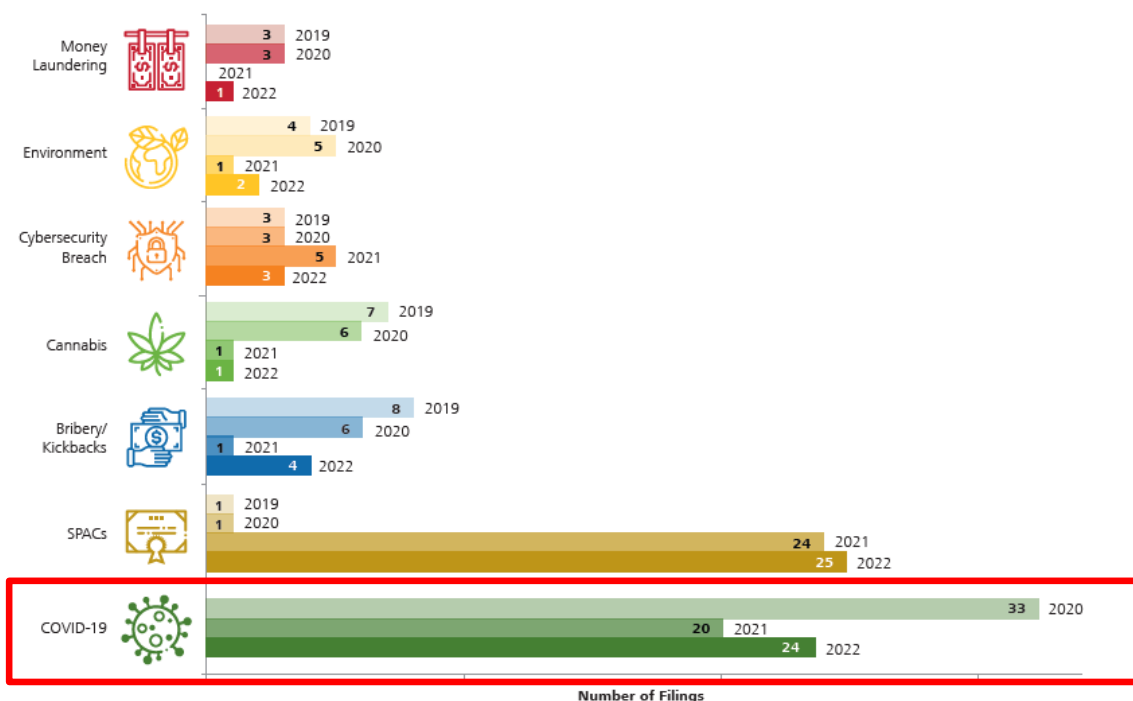
- Companies who had outbreaks in facilities (i.e. cruise-lines, prisons).
- Companies who could prosper as a result of the pandemic (i.e. drug, vaccine and testing manufacturers, on-line services, etc.).
- Companies whose operational or financial performance were disrupted by the pandemic (i.e. real estate development firms).
- Companies who profited at the outset but are now deteriorating as pandemic progressed (i.e. Peloton).

COVID Claims with Intersecting D&O and EPL Legal Issues:

- Inadequate health and safety procedures to prevent spread
- Mismanagement claims for failure to comply with employment related rules/regs
- False Claims Act
- Vaccine Objections

COVID-19 Securities Class Action Trends

Figure 7. Event-Driven and Other Special Cases by Filing Year
January 2019–December 2022

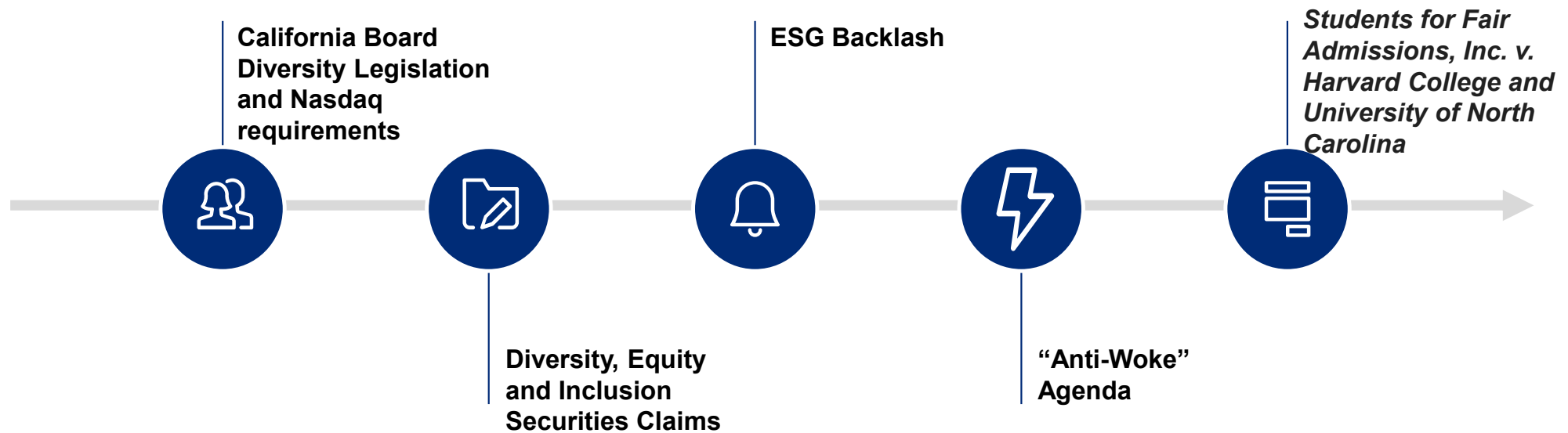


Source: NERA Full Year 2022 Report

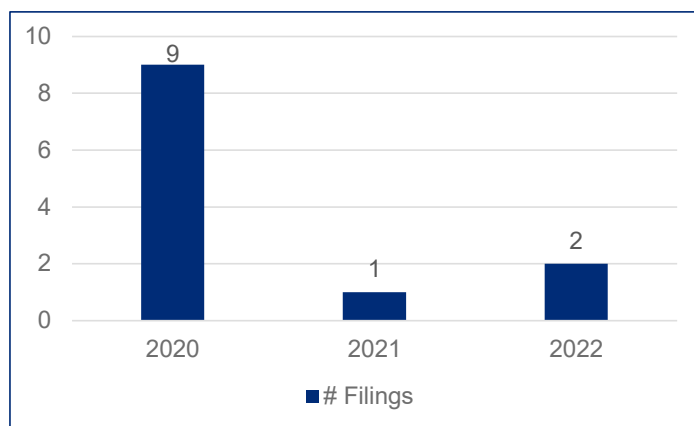
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Diversity, Equity and Inclusion and ESG Backlash

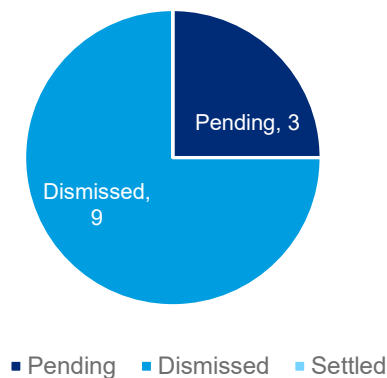


Selected Diversity, Equity & Inclusion (DEI) Securities Claims (as of 3/31/23)



12 Events Tracked

- 1 SCA only
- 10 Derivative Only
- 1 SCA and Derivative



Average Settlement: None settled

DISMISSALS:

- Danaher, Cisco, Facebook, Qualcomm, NortonLifeLock, OPKO Health, Oracle, The Gap, Monster Beverage

OTHER PENDING CASES:

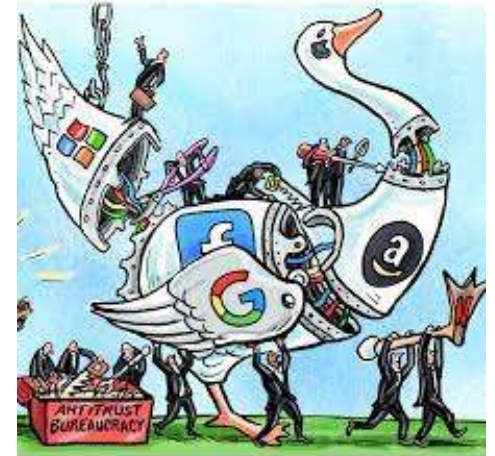
- Wells Fargo
- Starbucks
- Micron Technologies

Legal Theories:

- Breach of fiduciary duty
- Unjust enrichment
- Corporate waste
- Misleading statements
- Failure to monitor DEI leading to liability under Caremark theory

Additional Areas Leading to D&O Claims

- Antitrust
- Bankruptcy
- Bank Failures





QUESTIONS