

CURRENT ISSUES AND TRENDS IN D&O AND E&O

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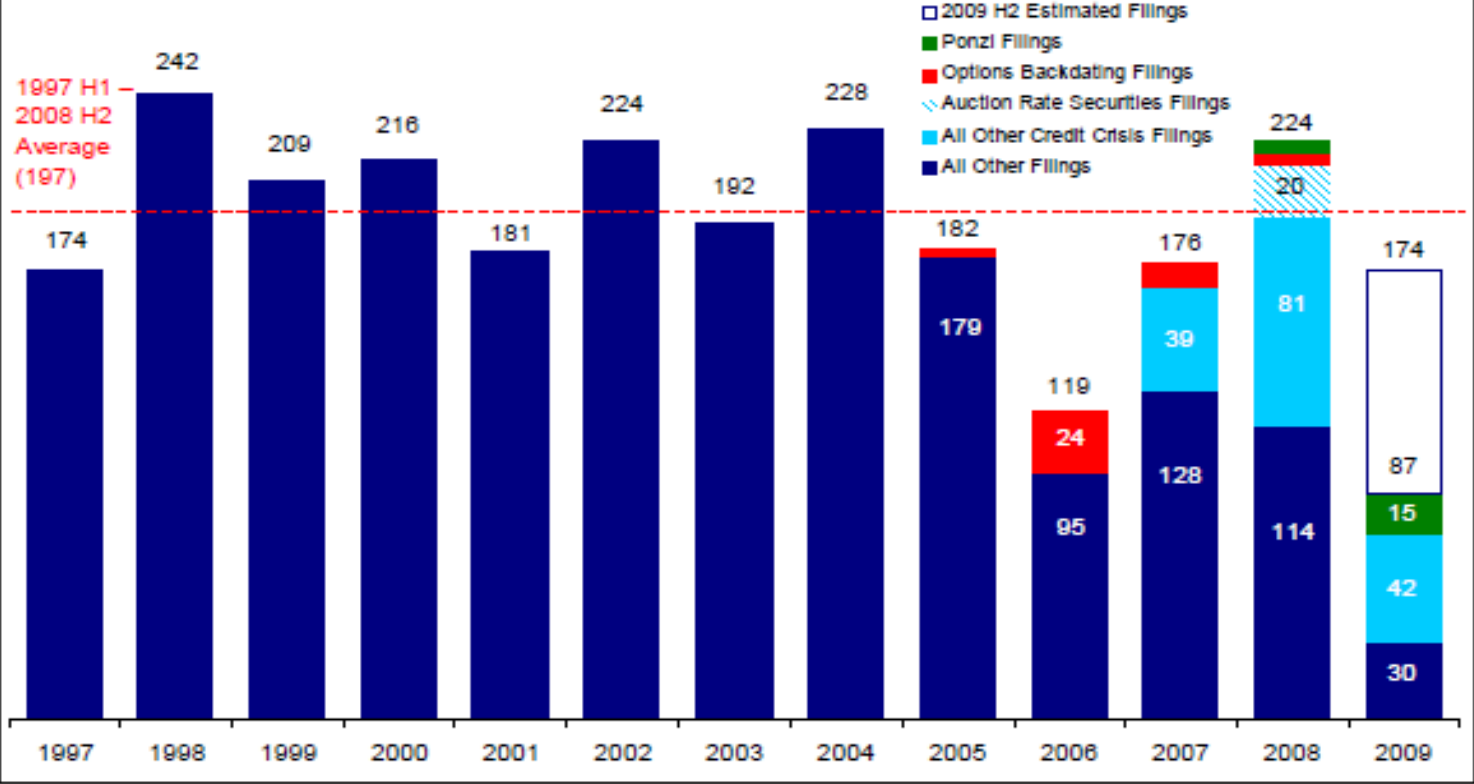
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INDUSTRY D&O RESULTS

- Tracking of industry results for D&O and E&O is generally difficult because results are included in the Other Liability-Claims Made section of Schedule P along with several other lines of business.
- Data on federal securities class actions (SCA's) however is readily available and widely followed by the industry as key indicator of profitability for Public D&O.
- SCA's account for most of Public D&O loss costs (80-85%).
- Data used in this presentation comes from the midyear 2009 updates recently published by NERA and Cornerstone.

CAF Index™ – Annual Number of Class Action Filings 1997 – 2009 YTD

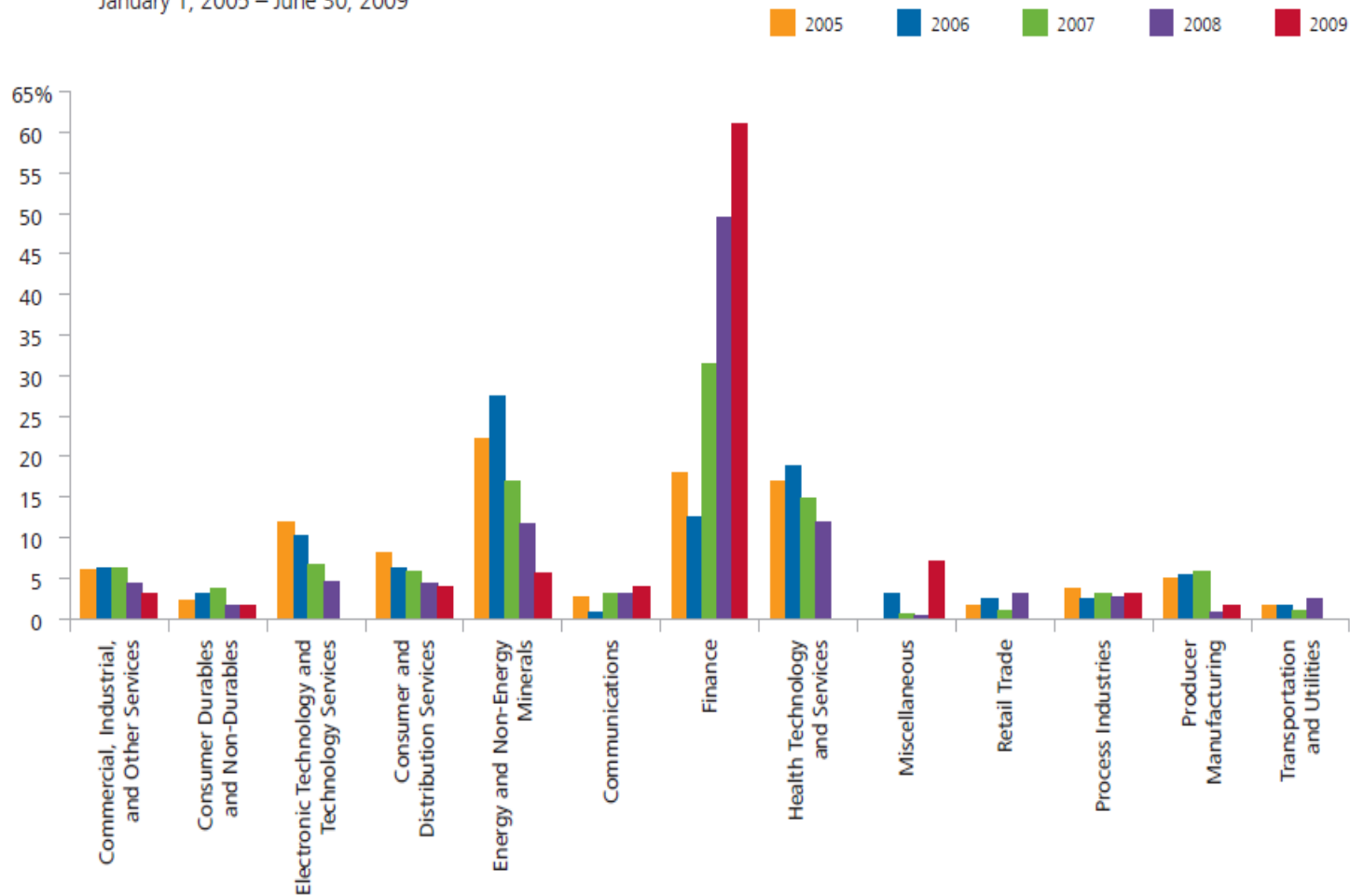


Source: Cornerstone 2009 Midyear Update

SCA FREQUENCY 1997-2009

- 1997-2004 averaged 208 “standard” SCA’s, then significant declines in 2005 (182) and 2006 (119) but increases in 2007 (176), 2008 (224) and a likely reduction in 2009 (174 projected).
- Systemic events caused spikes in 2001 (IPO laddering – 300) and 2002 (analyst claims - 44) which have been removed from this chart by Cornerstone.
- Options backdating was a systemic event in 2006 (24 SCA’s) but was primarily a derivative claim issue (about 200 cases).
- Increases in 2007-2009 are due to credit crisis cases, auction rate securities cases and Ponzi scheme cases.

Figure 4. Percentage of Filings by Sector and Year
 January 1, 2005 – June 30, 2009

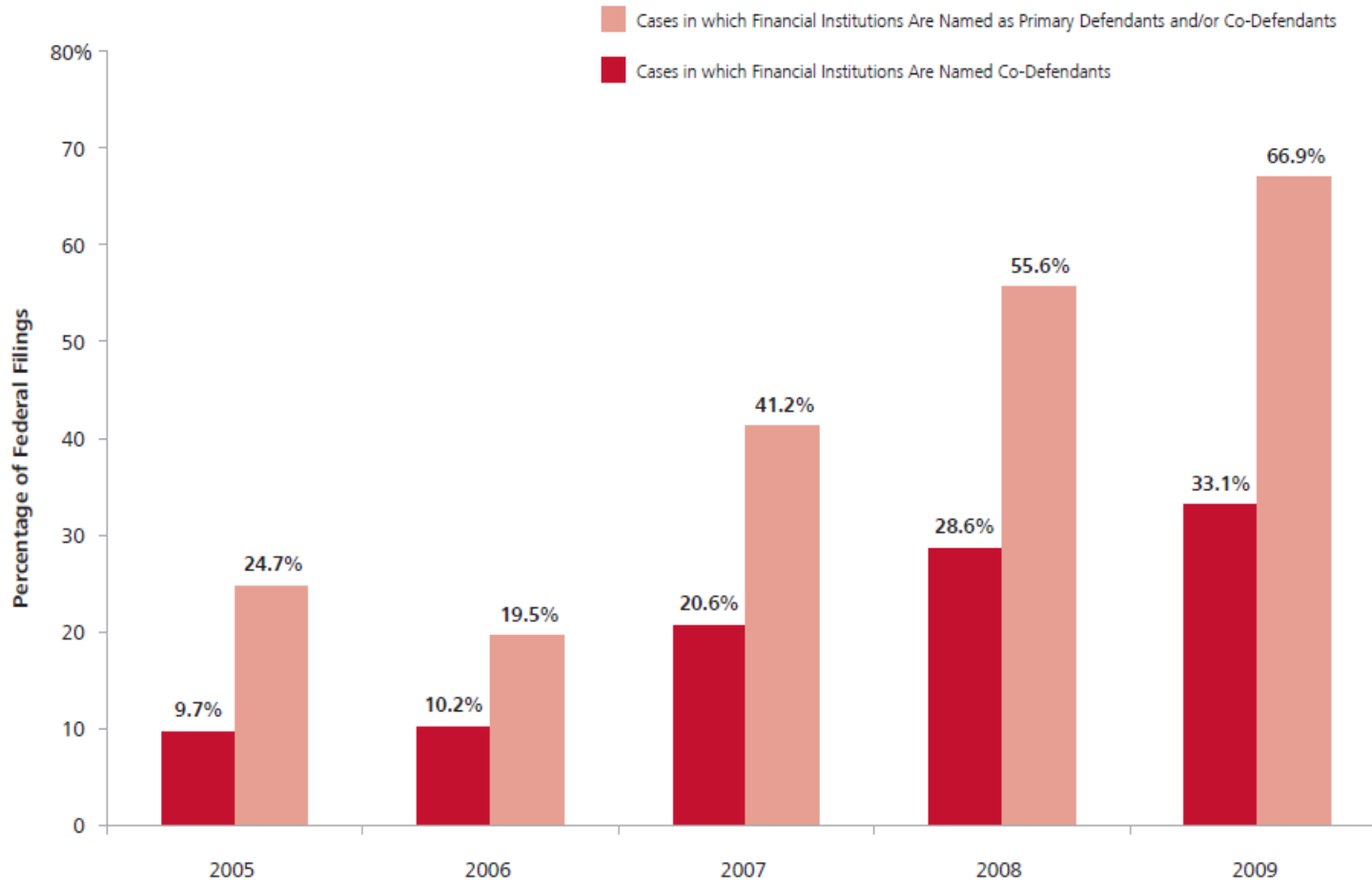


Source: NERA 2009 Midyear Update

SCA FILINGS BY INDUSTRY

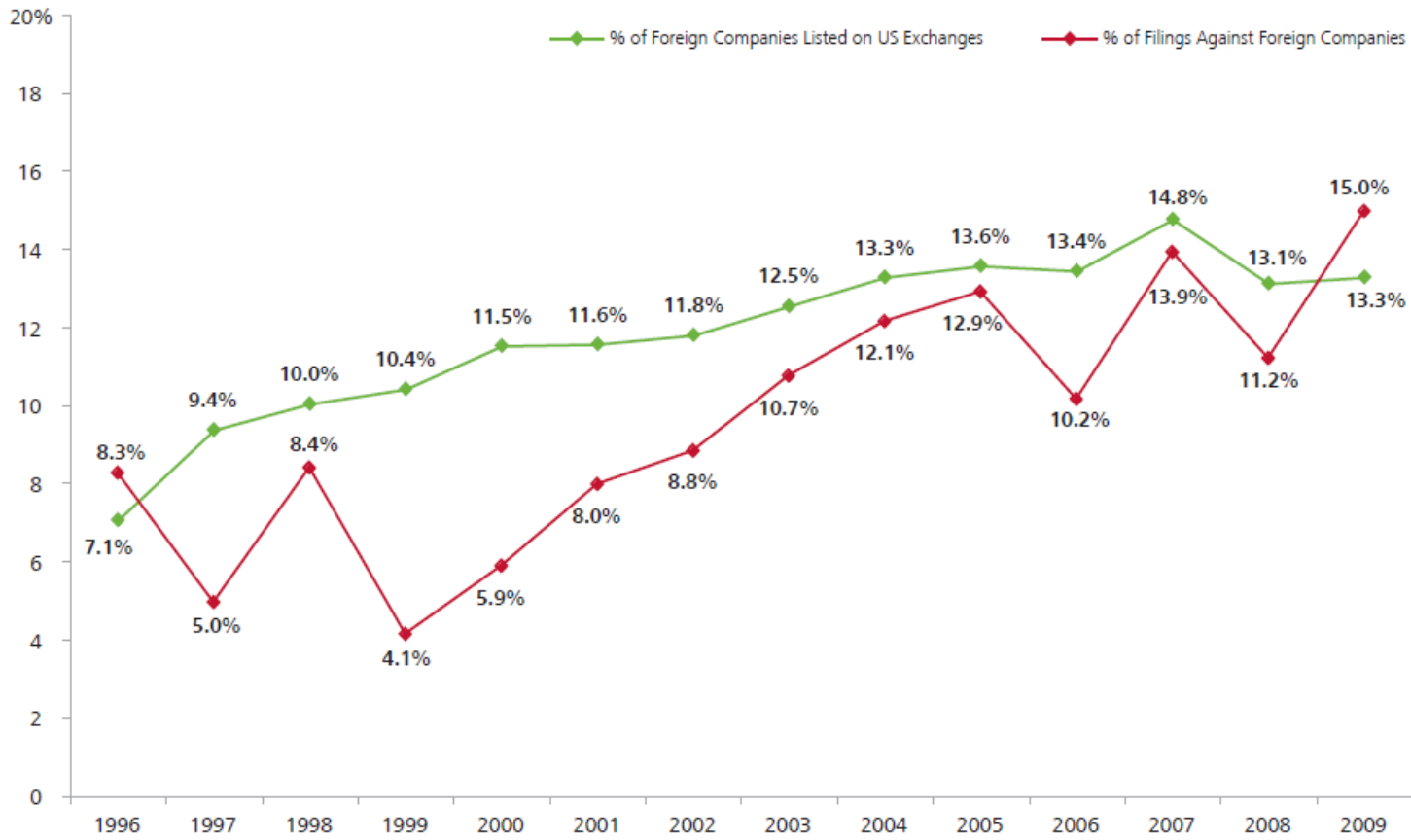
- As expected, increased SCA filing activity in 2007-2009 has been focused in financial sector, with over 50% of all 2008 cases naming a financial sector defendant and over 60% in 2009 so far.
- At the same time, SCA filing activity in other industry sectors has been stable or in some cases declining (energy, technology).
- Many of the recent FI cases are more E&O in nature, e.g. auction rate securities, Ponzi schemes, mortgage backed securities, and mutual funds.

Figure 5. Cases in which Financial Institutions Are Named Defendants as Percentage of All Federal Filings
January 1, 2005 – June 30, 2009



Source: NERA 2009 Midyear Update

Figure 8. Proportion of Federal Filings and Listed Companies that Involve Foreign Issuers
January 1, 1996 – June 30, 2009

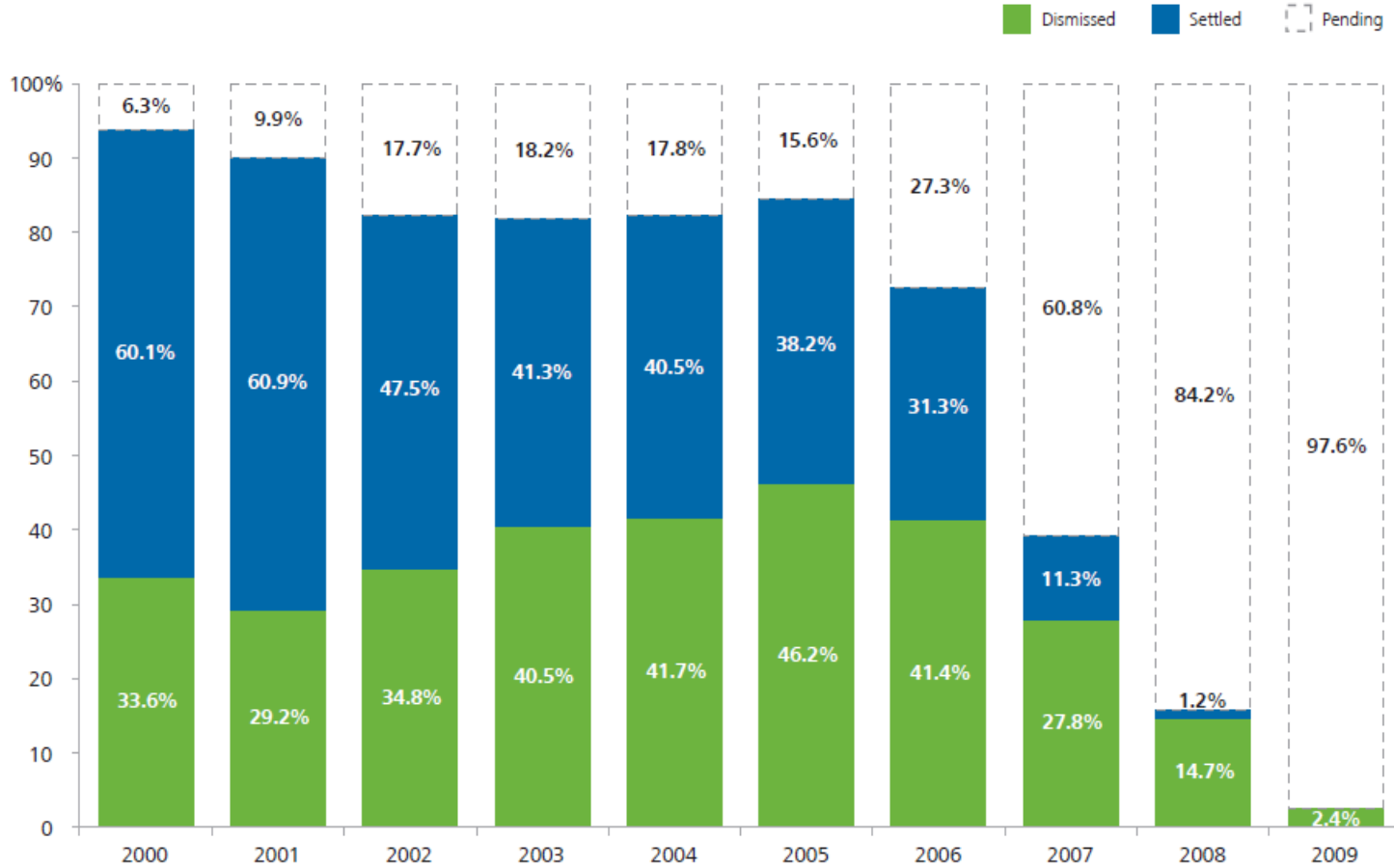


Source: NERA 2009 Midyear Update

SCA FILINGS AGAINST FOREIGN COMPANIES

- The % of foreign companies (non-US domiciled) listed on US stock exchanges has been growing steadily over the last ten years.
- At the same time, the % of SCA's filed in U.S. courts against foreign companies has also been increasing.
- For first time since 1996, the % of filings against foreign companies in 2009 is greater than the % of foreign companies listed on US exchanges, with 15% of filings but only 13% of companies traded on US markets are foreign.

Figure 16. **Status of Cases as Percentage of Federal Filings by File Year**
 January 1, 2000 – June 30, 2009



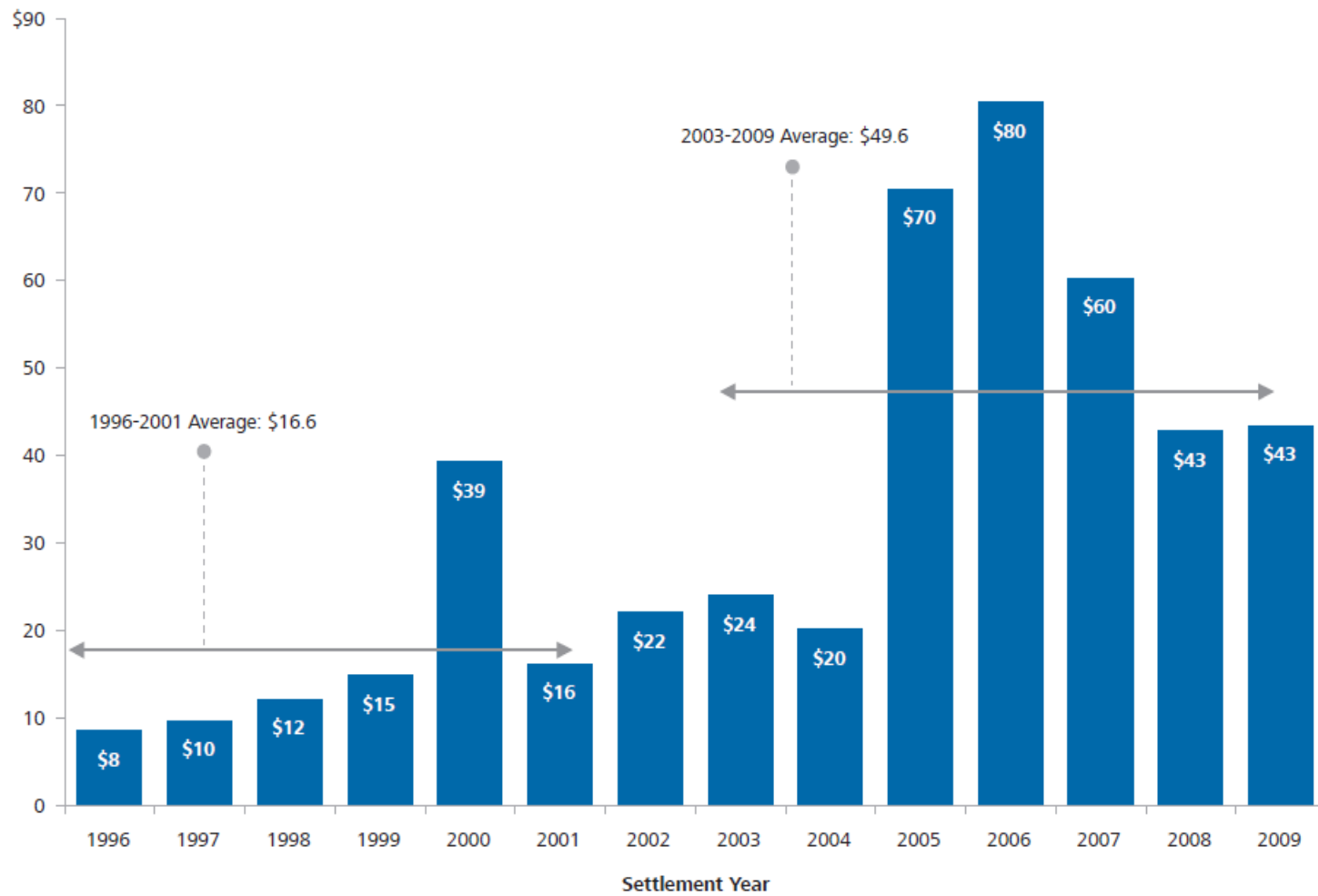
Source: NERA 2009 Midyear Update

File Year

STATUS OF SCA'S BY FILING YEAR

- As you would expect, SCA's take many years to be resolved. NERA tracks case status by filing year, e.g. accident year
- Since 1996, 44% of all resolved SCA's have been dismissed and 56% have settled with payment, with less than 1% reaching a verdict by trial.
- Only 3 credit crisis cases have settled as of 6/30/09 and another 16 cases (8%) have been dismissed, leaving over 90% unresolved.
- Data shows dismissal rate is increasing in recent years, presumably because of the 2005 US Supreme Court decision in Dura Pharmaceuticals on loss causation.

Figure 21. Average Settlement Value (\$MM), All Cases
January 1, 1996 – June 30, 2009



Source: NERA 2009 Midyear Update

AVERAGE SCA SEVERITY

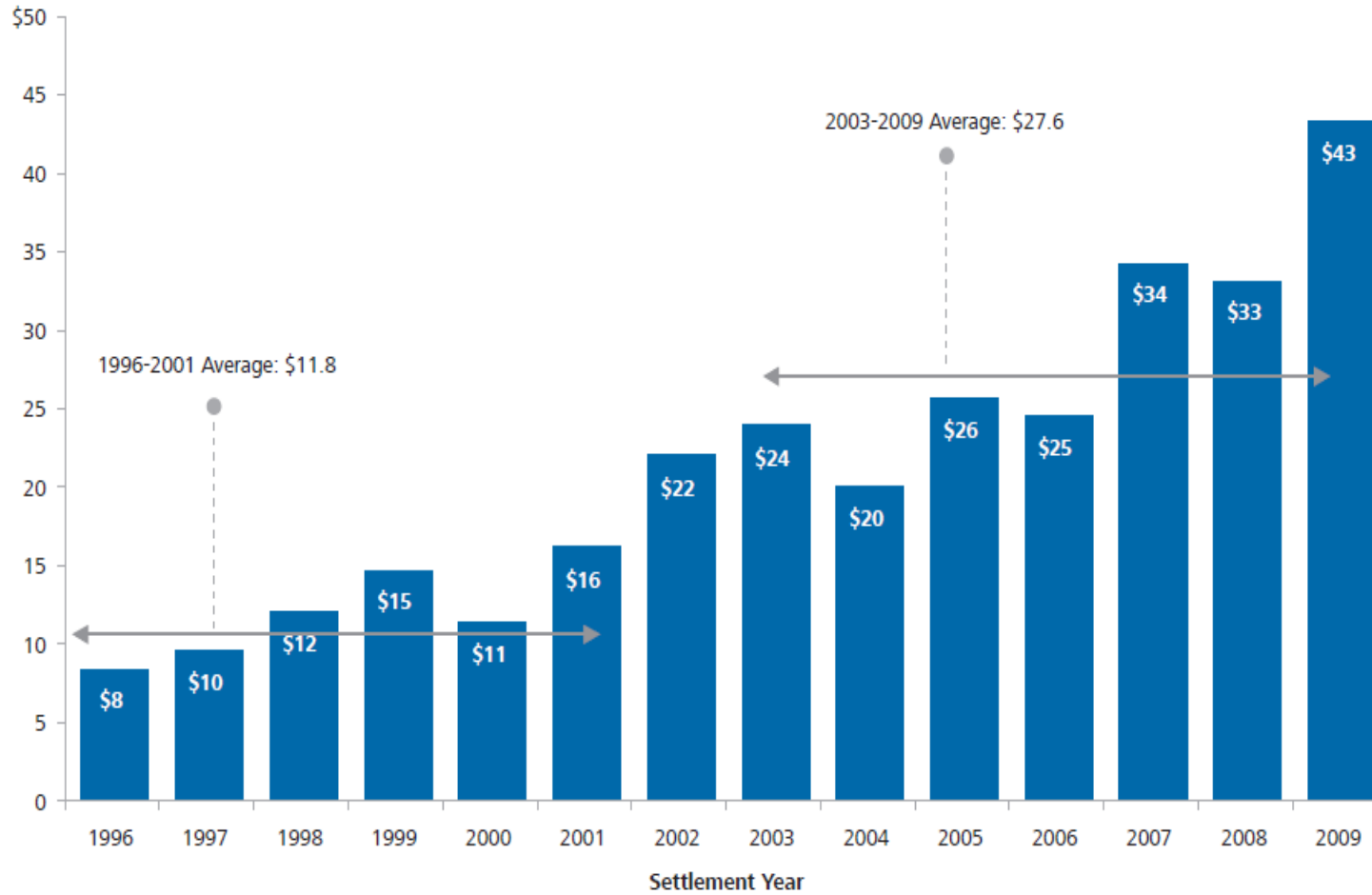
- Average settlement data by calendar year is quite volatile because of small # of very large cases > \$1 billion (Enron, Worldcom, Nortel, AOL)
- When these mega cases are removed, averages are much more stable and show reasonably steady upward trend.
- These numbers exclude defense costs, which can be very significant.

Table 2. Top Ten Securities Class Action Settlements

Ranking	Company	Settlement Year	Total Settlement Value (\$MM)	Settlements with Co-Defendants that Were			
				Financial Institutions ¹		Accounting Firms ¹	
				Value (\$MM)	Percent	Value (\$MM)	Percent
1	Enron Corp. ²	2008	\$7,242	\$6,903	95%	73	1%
2	WorldCom, Inc. ³	2005	6,158	6,004	98%	65	1%
3	Cendant Corp. ⁴	2000	3,561	342	10%	335	9%
4	Tyco International, Ltd.	2007	3,200	<i>n.a.</i>	<i>n.a.</i>	225	7%
5	AOL Time Warner Inc.	2006	2,650	<i>n.a.</i>	<i>n.a.</i>	100	4%
6	Nortel Networks (I)	2006	1,143	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
7	Royal Ahold, NV	2006	1,100	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
8	Nortel Networks (II)	2006	1,074	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
9	McKesson HBOC Inc.	2008	1,043	10	1%	73	7%
10	UnitedHealth Group	2009	926	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
	Total		28,095	13,259	47%	870	3%

Source: NERA 2009 Midyear Update

Figure 22. Average Settlement Value (\$MM), Excluding Settlements over \$1 Billion
January 1, 1996 – June 30, 2009

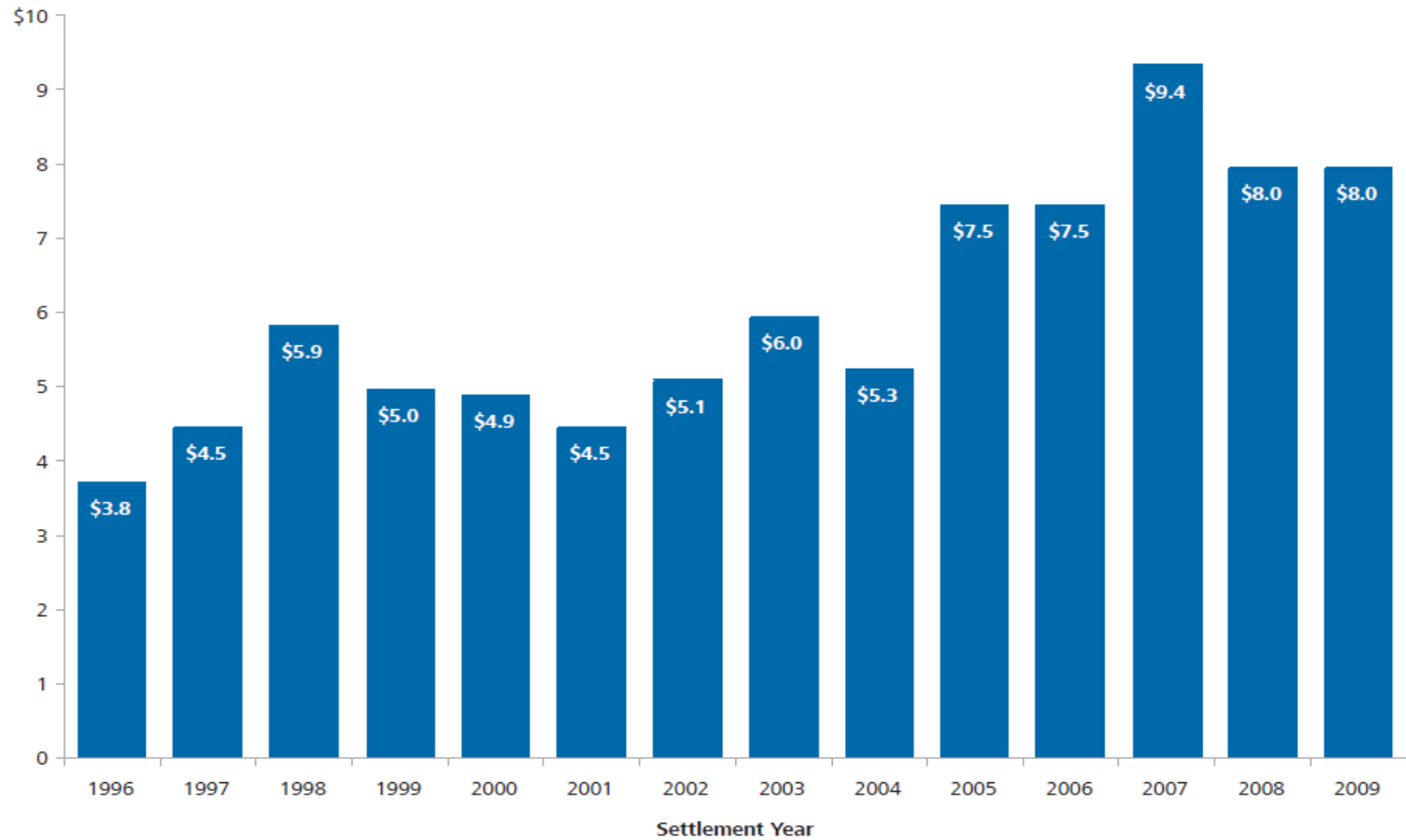


Source: NERA 2009 Midyear Update

MEDIAN SCA SEVERITY

- Because of the impact of large cases, median is a more useful indicator of general severity trends.
- Median settlement values have been under \$10 million and do not show any significant increase over last five years.

Figure 20. **Median Settlement Value (\$MM)**
January 1, 1996 – June 30, 2009

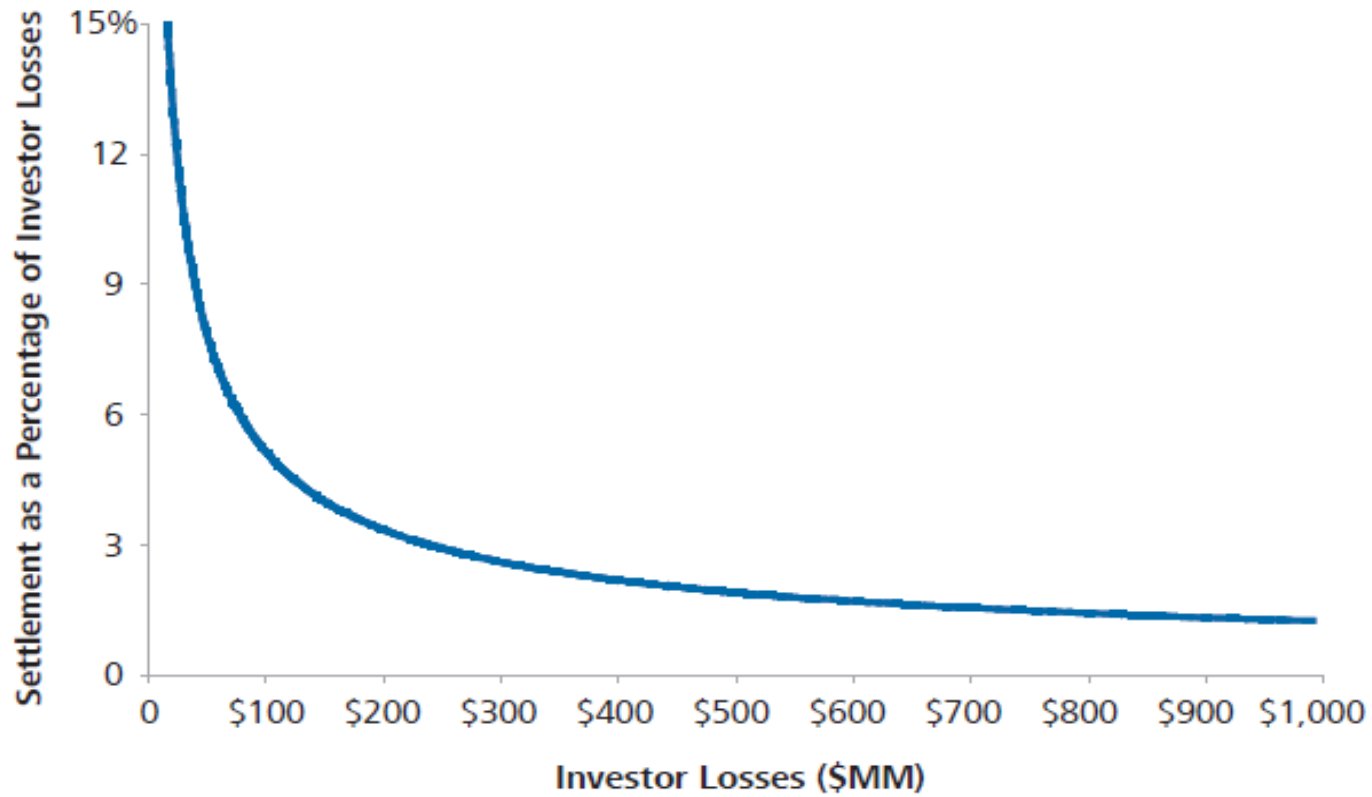


Source: NERA 2009 Midyear Update

DRIVERS OF SETTLEMENT VALUES

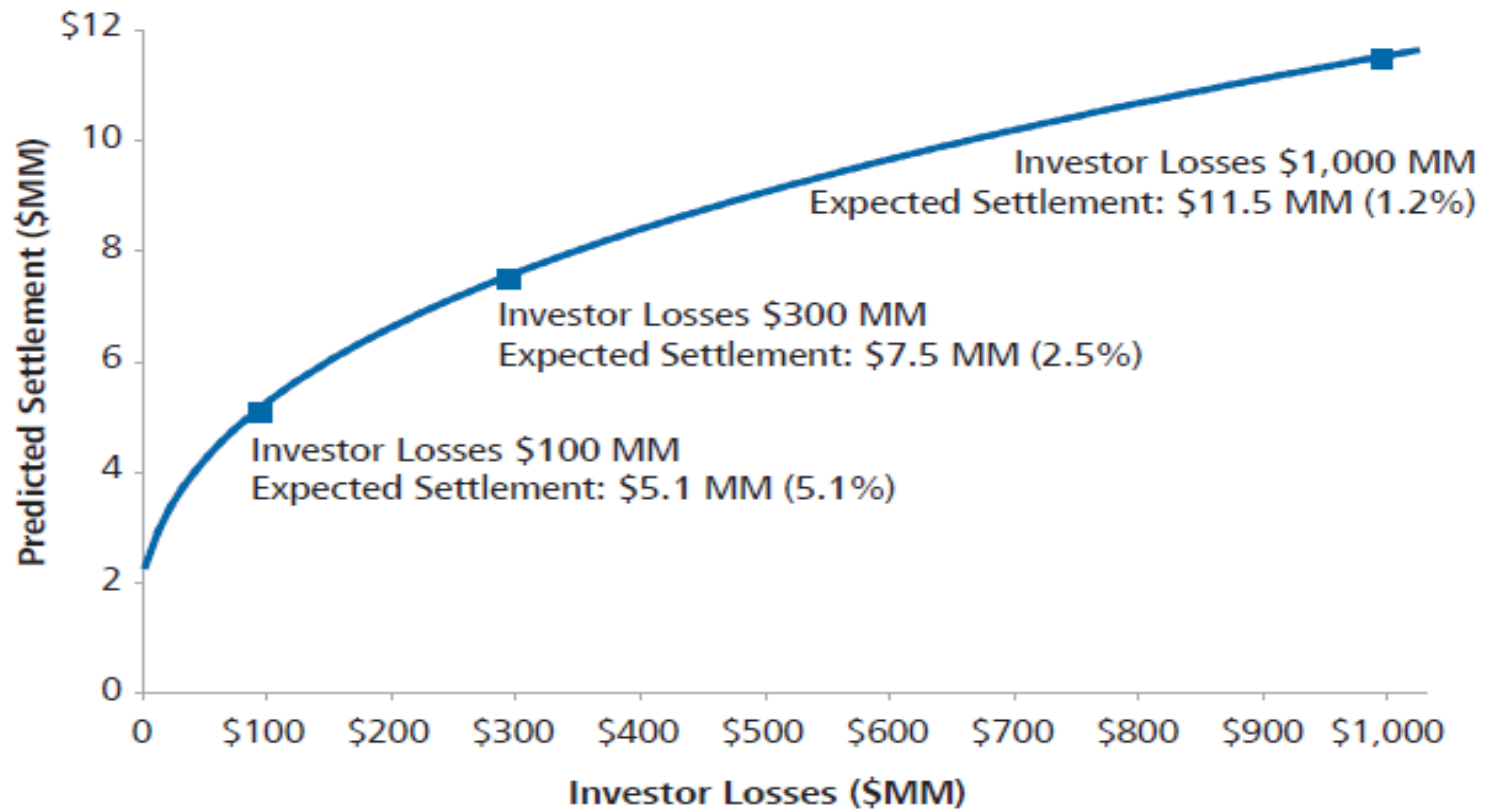
- NERA has found that investor losses due to decline in share price are single most powerful determinant of settlements.
- However the ratio of settlements to investor losses decreases steadily as investor losses rise.

Figure 25. **As Investor Losses Rise, Expected Settlements as a Percentage of Those Losses Decline**



Source: NERA 2009 Midyear Update

Figure 26. **Expected Settlement Rises More Slowly Than Investor Losses**



Source: NERA 2009 Midyear Update

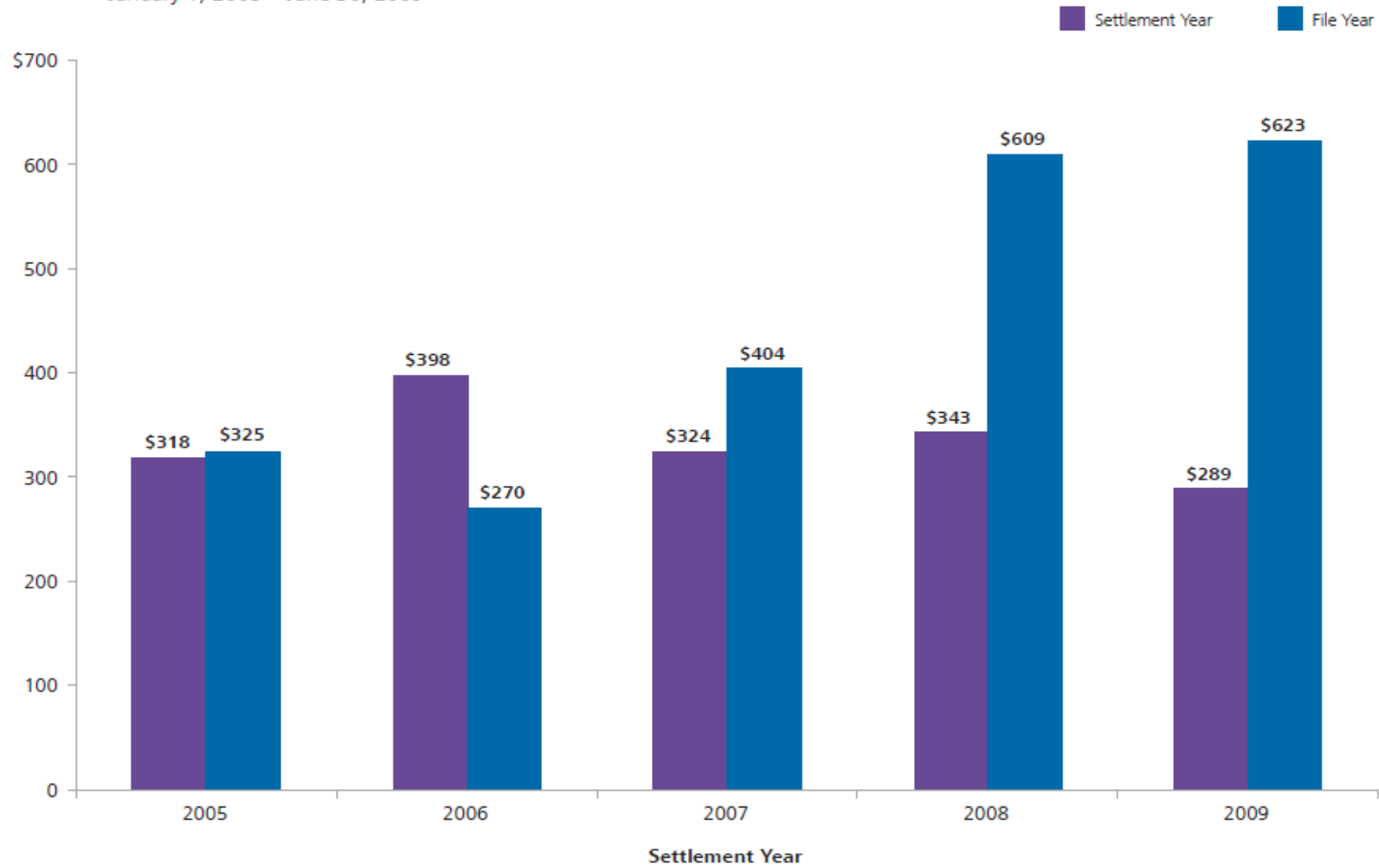
OTHER KEY DRIVERS OF SEVERITY

- Defendant company's market capitalization
- Institutional investors serving as lead plaintiff
- Admission of accounting irregularities (restatements)
- Involvement of professional firms as codefendants, especially accountants.

WHERE ARE FUTURE SETTLEMENTS HEADING?

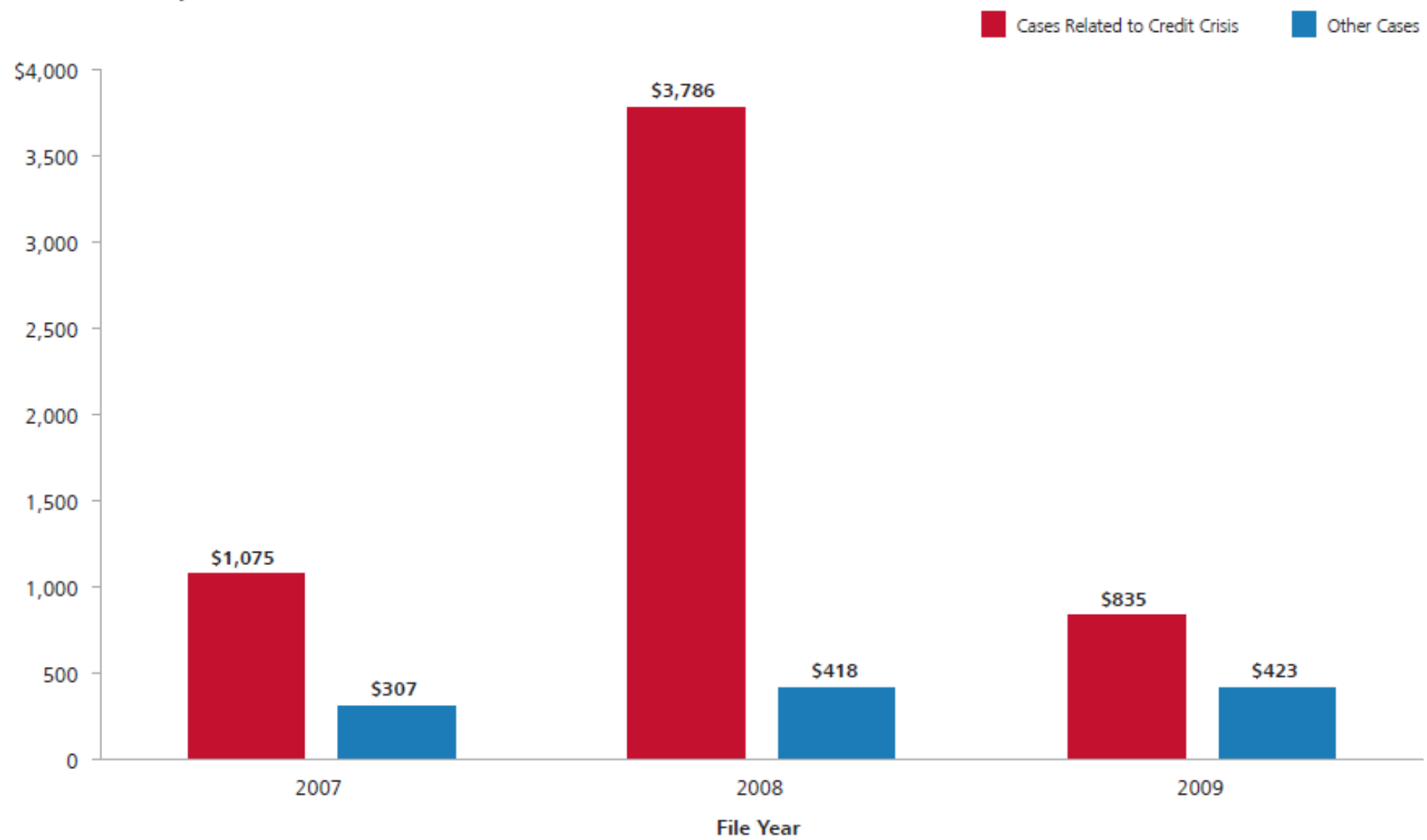
- Median investor losses for cases settled in 2005-2008 averaged \$350M.
- For cases filed in 2005-2008, however, there is a sharp increase in median investor losses, especially in 2008 and 2009 (over \$600M in each year) and especially 2008 credit crisis cases (\$3.8B).
- Companies affected by credit crisis may not have resources to make large settlement payments, especially if they have gone bankrupt or are receiving government loans (TARP).

Figure 29. Federal Filings Median Investor Losses (\$MM) by Settlement and Filing Year
January 1, 2005 – June 30, 2009



Source: NERA 2009 Midyear Update

Figure 31. Median Investor Losses (\$MM) for Cases Related to Credit Crisis and Other Cases By Filing Year
January 1, 2007 – June 30, 2009



Source: NERA 2009 Midyear Update

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