

REFLECTING ON 2023 & INSIGHTS FOR 2024

BRP MANAGEMENT LIABILITY PRACTICE

OVERVIEW:

The Public D&O Market through 2023 continued to be driven by basic principles of supply and demand economics. The supply of D&O capacity remains robust, after capacity expanded rapidly with new entrants pursuing elevated premiums/retentions from the recent hard market. Demand, however, remains depressed with limited capital market activity in 2023 to drive demand via the creation of new public companies. The excessive supply continues to push carriers to compete over existing public business, in turn driving down rates and retentions for insureds.

2023 MARKETPLACE TRENDS:

Pricing: After an abrupt shift to soft market conditions in the second half of 2022, the D&O marketplace remained highly favorable for most insureds throughout 2023. Both newly public (within the past three years) and existing public company insureds continued to secure material premium and retention reductions across their D&O programs. For newly public companies, premium cuts were typically north of 35% - 40%, while older public insureds experienced more muted but nevertheless meaningful decreases (20%+).

Capacity: Insurance capacity remains readily available across the D&O space, with slower capital markets activity continuing to limit new public company business for insurers. The influx of new domestic D&O capacity on the back of the hard market, along with London's re-emergence in the U.S. marketplace, has also served to drive more favorable buying conditions for insureds.

Terms & Conditions: Insurance carriers remain flexible on terms/conditions and have continued to expand their risk appetites. In particular, carriers remain willing to reduce retentions and broaden coverage terms as ways to differentiate in a crowded marketplace. Insureds should partner with a strong brokerage team to secure the broadest coverage available in the marketplace.

2024 PROJECTED MARKETPLACE TRENDS:

As we move into 2024, we expect to see some deceleration in rate decreases for most insureds. While decreases will remain available, we anticipate insurers will take a more cautious approach across D&O business as they assess overall portfolios following two years of aggressive rate reductions. That said, absent a material change in broader financial conditions to drive new IPO or M&A opportunities, we expect D&O capacity to remain stable, abundant, and competitively priced for 2024.

D&O MARKET – BY THE NUMBERS:

Total IPOs*

2020	504
2021	1090
2022	218
2023	171

2024 Underwriter Rate Expectations

- **84.2%** of D&O underwriters project flat to single-digit decreases for traditional business
- **54.9%** of D&O underwriters project 5% - 20% premiums decreases for recent IPO/DeSPAC business**

* Bloomberg Law

** IPO/DeSPAC includes clients with >3 years as a public company

CLAIMS TRENDS:

Securities Class Action (“SCA”) filings increased modestly to **199** in 2023, after falling each year since the peak of 291 filings in 2019. The Healthcare industry maintained the highest volume of filings (43) throughout 2023, but filings in the Financials Industry grew most significantly year/year. Specifically, Financials industry filings nearly doubled in 2023, driven largely by uncertainty across the banking sector.

KEY TAKEAWAYS:



While Healthcare remained the most targeted industry class in 2023, the 43 filings represented the lowest number of suits since 2015.



Although the creation of new SPAC vehicles has slowed, SPACs remain a concern. 22 SCA Filings in 2023 involved a SPAC or recent DeSPAC transaction.

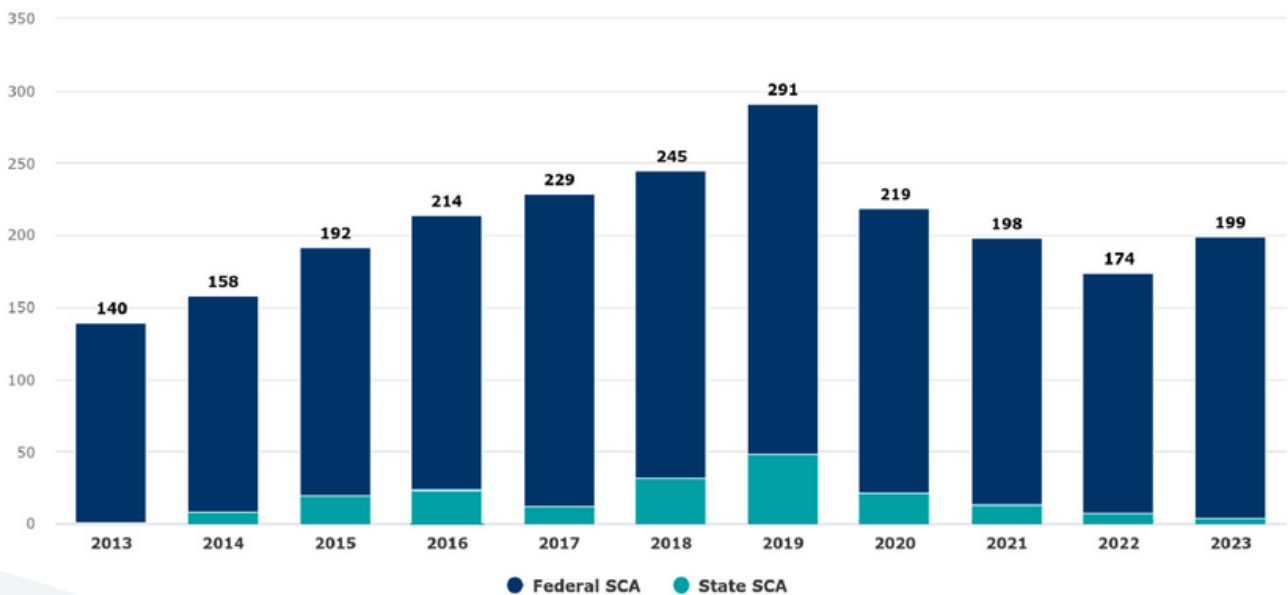


Most common sources of SCAs included misstatements around Operations Problems and Missed Earnings/Performance Projections.



Only 15 SCAs in 2023 involved misstatements made during an IPO process, with an additional 3 suits brought in State court. Total IPO suits are down materially from prior years and reflect the tepid capital markets environment through 2023.

Filing Volume by Year



Source: Stanford Securities Litigation Analytics

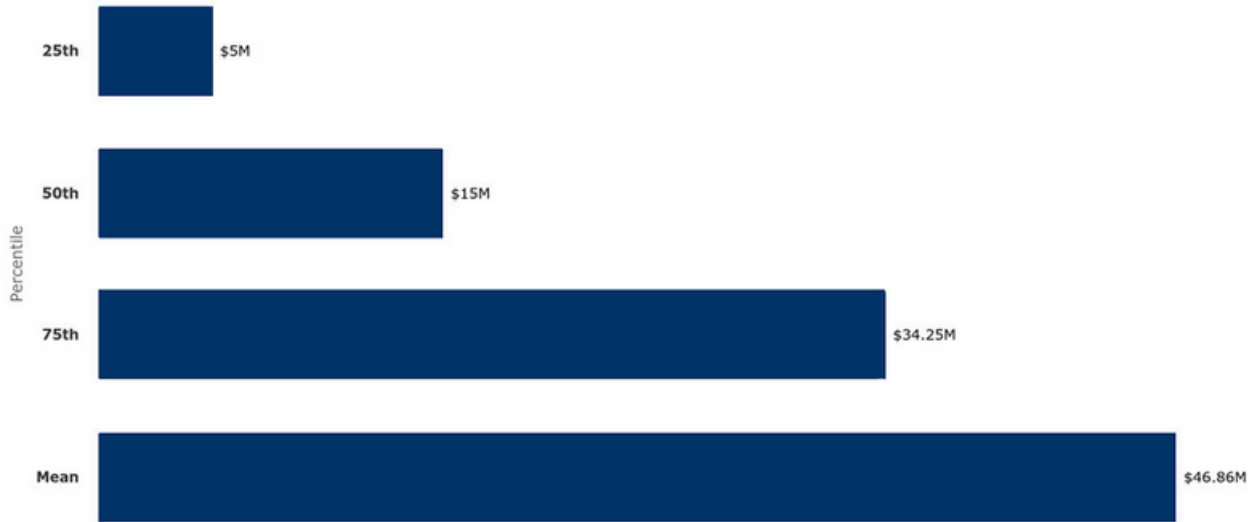
2023 SETTLEMENT UPDATES:

Federal Class Action settlements totaled about **\$4B** across 83 settled cases in 2023.

Median settlement value has continued to rise modestly over the past several years, increasing to **\$13.93M**.

The 4 largest settlements accounted for over 50% of the total settlement amount, with Wells Fargo alone accounting for 25% (\$1B settlement).

2023 DISTRIBUTION OF SETTLEMENT SIZES



Source: Stanford Securities Litigation Analytics

WHAT TO WATCH FOR IN 2024:

- New regulatory developments and D&O impact:
 - SEC Cyber Disclosure rules, mandating timely disclosures of material cyber incidents
 - SPAC rules updating required disclosures in SPAC/DeSPAC transactions.
- Financing and access to capital continue to remain critical for insurers, as we continue in a prolonged elevated interest rate environment.
- Impact of Artificial Intelligence across business operations, including any associated market disclosures.
- ESG remains an important topic, including upcoming SEC rulemaking around climate change disclosures.
- Event Driven litigation remains prevalent; Recent litigation drivers included geopolitics, interest rates, wildfires, and lead cables.
- Continued stress in the banking sector may adversely impact smaller, regional financial institutions.



STATE OF THE MARKET - THE UNDERWRITERS' PERSPECTIVE:

We surveyed over 100 underwriters across the public D&O marketplace to get their thoughts and concerns heading into 2024.

Here are the Underwriter's responses to the following risk/exposure concerns for 2024:



WHERE DO YOU EXPECT RATES?

	Public D&O - Primary	Public D&O - Excess	Recent IPO /DeSPAC's (past 3 years)	Microcap (<\$100M Market Cap)	High-concern Industries	Private D&O/ Management Liability
Down over 20%	0.0%	0.9%	15.9%			
Down 10% - 20%	0.9%	11.4%	31.0%	4.4%	3.5%	1.8%
Down 5% - 10%	20.2%	43.0%	23.9%	19.3%	6.1%	19.5%
Flat (+/- 5%)	64.0%	37.7%	18.6%	61.4%	40.4%	63.7%
Up 5% - 10%	12.3%	6.1%	8.0%	13.2%	34.2%	13.3%
Up 10% - 20%	2.6%	0.9%	2.7%	0.9%	14.0%	0.9%
Over 20%				0.0%	1.8%	0.0%

(Green most popular | Yellow second most popular)

INDUSTRY HEAT MAP

	Survey
Bitcoin/Blockchain/Cryptocurrency	98.7%
Cannabis Related Organizations	98.0%
SPACs	62.5%
Educational	53.6%
Biotechnology & Pharma	53.0%
FI- Banks	43.7%
Travel/Hospitality/Entertainment	38.6%
Technology	37.1%
Energy/Utilities	36.5%
Business Services	36.0%
Retail/Consumer Products	35.1%

TOP 5 UNDERWRITER QUESTIONS GOING INTO 2024

- 1 CYBER/SEC DISCLOSURE
- 2 CAPITAL COSTS/RATES/ECONOMY
- 3 2024 ELECTIONS AND GEO POLITICS
- 4 ESG
- 5 AI



For more information, email the BRP Management Liability Practice:
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