

**Rising Volume and Cost of Securities Class Action Lawsuits is a Growing Tax on U.S. Business, Chubb Data Reveals**  
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**Average cost of a settled merger-objection claim has increased 63% to \$4.5 million over four years, with little benefit to shareholders**

NEW YORK, July 10, 2018 /PRNewswire/ -- New proprietary data disclosed by Chubb shows a dramatic increase in the cost of insurance claims for merger-objection litigation in recent years. Between 2012 and 2016, the average cost of settled merger-objection claims grew 63% to \$4.5 million in 2016 from \$2.8 million in 2012. The average for the four-year period was \$3.6 million. The portion of total claims payments going to shareholders – 39% – was far less than the 61% that flowed to plaintiffs and defense attorneys for fees and expenses. For dismissed merger-objection claims, the average total cost increased 162% to \$2.3 million in 2016 from \$880,000 in 2012. The average total direct cost was approximately \$912,000 for the period.

The data from Chubb, which is the global leader in financial lines including directors and officers (D&O) insurance, was revealed in a recent panel discussion featuring four distinguished litigators during the company's annual Preferred Securities Panel Counsel Conference, which was held June 11-12. The panel, entitled *From Nuisance to Menace: The Rising Tide of Securities Class Action Litigation*, was moderated by Chubb's Scott Meyer, Division President, North America Financial Lines. A replay of the event is available [here](#).

"In the world of securities litigation, it seems like common sense and practicality are no longer prevalent when you take into consideration the combined proliferation of class action and merger-objection lawsuits and their associated costs," said Mr. Meyer. "This proliferation is not only impacting businesses but is also manifesting as a total tax on society. In the current environment, businesses are not necessarily better managed, shareholders are not necessarily safer, and the economy as a whole is not necessarily less exposed."

"Eighty-five percent of public company merger transactions were challenged" with a merger-objection lawsuit, noted panelist Bruce Vanyo, the head of the Securities Litigation and Enforcement Practice at Katten Muchin Rosenman LLP. "We are being too polite about this. These lawsuits are an abomination. They really are. It's like highway robbery. The only thing missing is the mask and the gun. It is embarrassing that our legal system tolerates it."

"Part of the problem here is there are no consequences to the plaintiffs or the plaintiffs' attorneys for filing these frivolous lawsuits," said Gerard G. Pecht, Global Head of Dispute Resolution and Litigation at Norton Rose Fulbright US LLP. "There is rarely an instance where there is any sort of a sanction or penalty imposed. So you can just generate the lawsuits with a computer, whether they are meritorious or not, and see what happens."

Panelist Barry Kaplan, partner and head of the Northwest Litigation Group in the Seattle office of Wilson Sonsini Goodrich & Rosati, talked about the generational shift in the plaintiffs' bar. "We have new entrants now who are bidding for some role in the plaintiffs' securities bar," he said. "Some are focused on mergers and some are focused on less well-grounded stock drop suits. There are some smaller players who are into filing second-tier cases and making a push to become the most prolific filers."

Daniel J. Tyukody, Co-Chair of the Securities Class Action Practice at Greenberg Traurig LLP, commented on one potential solution. "The biggest effect would be if you had a loser-pay provision, which would certainly eliminate a huge number of these cases," he said. "The real problem we have right now is the number of marginal cases, and we don't have a good filtering mechanism to get rid of them. We all know there are situations where bad stuff happened, and we've got to deal with it. But the biggest cost and tax on the economy is the plethora of very weak cases that still cost hundreds of thousands of dollars or more to get rid of."

Among the topics covered in the wide-ranging discussion included the recent [Cyan v. Beaver County Employees Retirement Fund](#) Supreme Court decision; whether the U.S. should adopt a [loser-pay](#) model; how [data breaches](#) impact the D&O litigation landscape; and [reforms](#) that could stem the rising tide of litigation.

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