Lex Machina

Securities Litigation Report 2018

Lex Machina
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Introduction

Lex Machina's 2018 Securities Litigation Report examines the latest trends and insights from litigation brought under the Securities Act of 1933, the Securities Exchange Act of 1934, and other federal securities laws. This report compares data across two 18 month periods, (1) July 1, 2015 through December 31, 2016, and (2) January 1, 2017 through June 30, 2018. These time periods are separated by the nomination of Jay Clayton as SEC Chairman in January 2017.

Encompassing over 15,000 U.S. District Court cases and counting, Lex Machina's Securities Litigation Module represents the most comprehensive and accurate dataset available for analyzing securities litigation. The Securities Module analyzes the experience and behavior of judges, case timings, findings, damages, injunctions, the track records of law firms, and more. From precise timing metrics that inform legal budgeting, to trends among top law firms and leading judges, Legal Analytics provide customized insights that supplement traditional research and accumulated experience. Leveraging this data gives companies and firms a competitive edge -- companies can select counsel based on a proven track record, or firms can provide better outcomes by applying data to their strategies, whether drafting a demand letter or negotiating a settlement.

Key Trends and Highlights

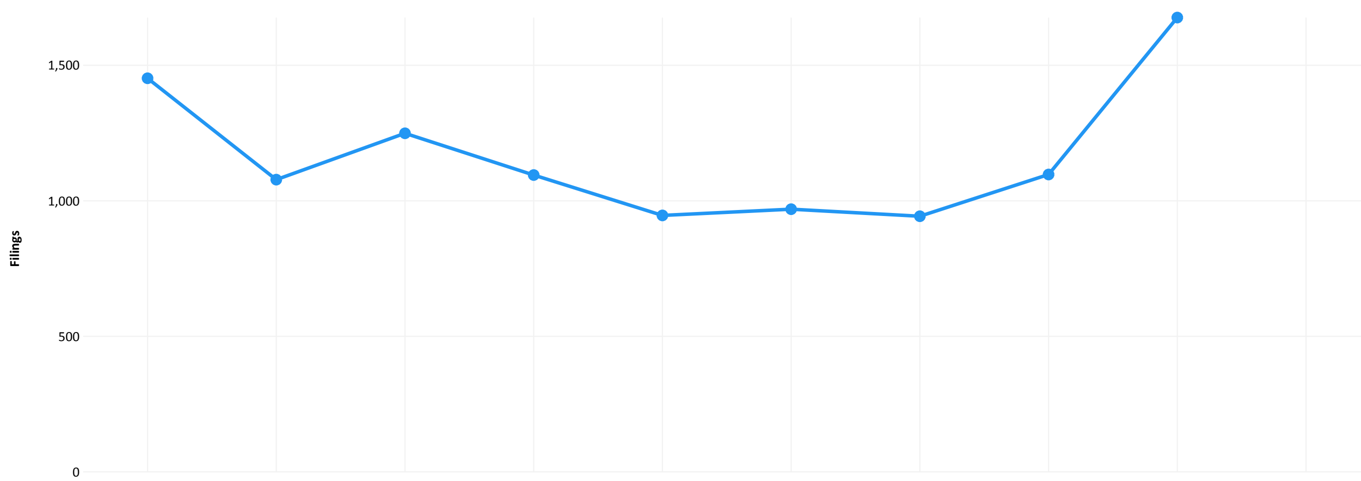
- Federal district court filings have increased in the most recent 18 months, with the District of Delaware rising to the third top district for new filings.
- Case resolutions have shifted more favorably towards defendants with increases in claim defendants winning on judgment on the pleadings and plaintiff voluntary dismissals.
- Cases terminating in the 18 months since 2017 took less than half as long as the cases termination in the preceding 18 months.
- Damages across the board are down.

Table of Contents

U.S. District Court Filings

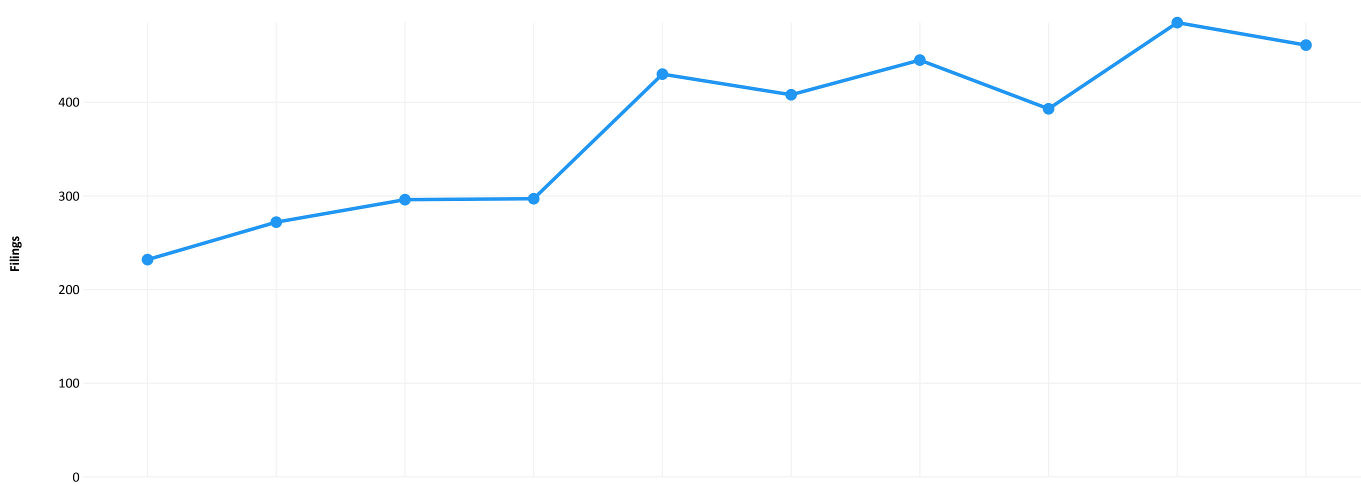
Securities case filings in federal district courts rose by over 50% between 2016 and 2017, increasing by nearly 600 cases. By comparison, annual case filings stayed relatively steady during the previous seven years. The number of filings is projected to continue to grow during 2018, with over 900 cases filed during the first half of the year.

Figure 1: Securities Cases Filed from 2009-01-01 to 2018-06-30



	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Securities	1,452	1,078	1,249	1,095	946	969	943	1,097	1,676	946

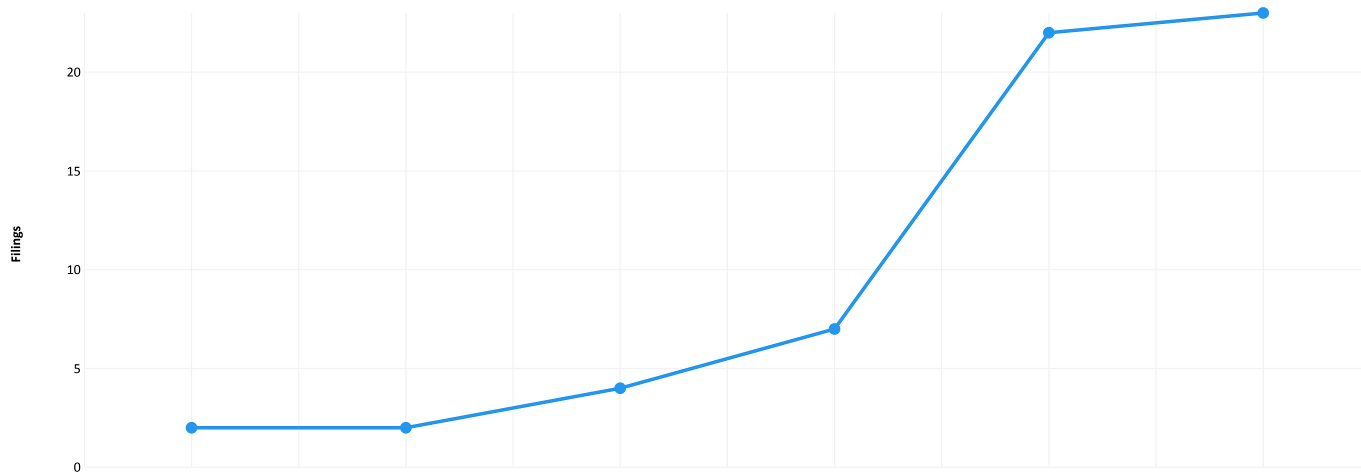
Figure 2: Securities Cases Filed from 2016-01-01 to 2018-06-30



	2016 Q1	2016 Q2	2016 Q3	2016 Q4	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2
Securities	232	272	296	297	430	408	445	393	485	461

The first two quarters of 2018 saw a significant rise in the number of Securities cases dealing with blockchain, cryptocurrency, or Bitcoin. Whether Bitcoin is a security, and to what extent it should be regulated, is the subject of some debate. With Lex Machina's keyword search feature, you can search for case filings relating to cryptocurrencies and other emerging areas.

Figure 3: Securities Cases Mentioning "Blockchain", "Cryptocurrency", or "Bitcoin" in Pleadings Documents Filed from 2017-01-01 to 2018-06-30



	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2
Securities	2	2	4	7	22	23

The District of Delaware (D.Del.) is taking on a much larger portion of the filings in the most recent 18 months than in the 18 months preceding January 1, 2017. Between July 1, 2015 and December 31, 2016, D.Del. did not rank among the top five venues for Securities case filings. More recently, between January 1, 2017 and June 30, 2018, D.Del. now ranks 3rd in Securities case filings with 198 cases, capturing 8% of all filings. The Southern District of New York and the Northern District of California remain the first and second top jurisdictions, respectively, with the distribution across districts becoming more even in the recent period.

Figure 4: Top District Courts by Securities Cases Filed from 2015-07-01 to 2016-12-31

S.D.N.Y.	363	**23%**
N.D.Cal.	169	**11%**
C.D.Cal.	118	**7%**
D.N.J.	87	**5%**
D.Mass.	57	**4%**
Other Courts	799	**50%**

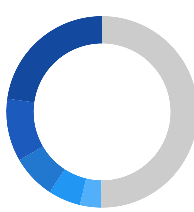


Figure 5: Top District Courts by Securities Cases Filed from 2017-01-01 to 2018-06-30

S.D.N.Y.	376	**14%**
N.D.Cal.	273	**10%**
D.Del.	198	**8%**
C.D.Cal.	175	**7%**
D.N.J.	155	**6%**
Other Courts	1,445	**55%**

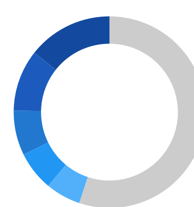
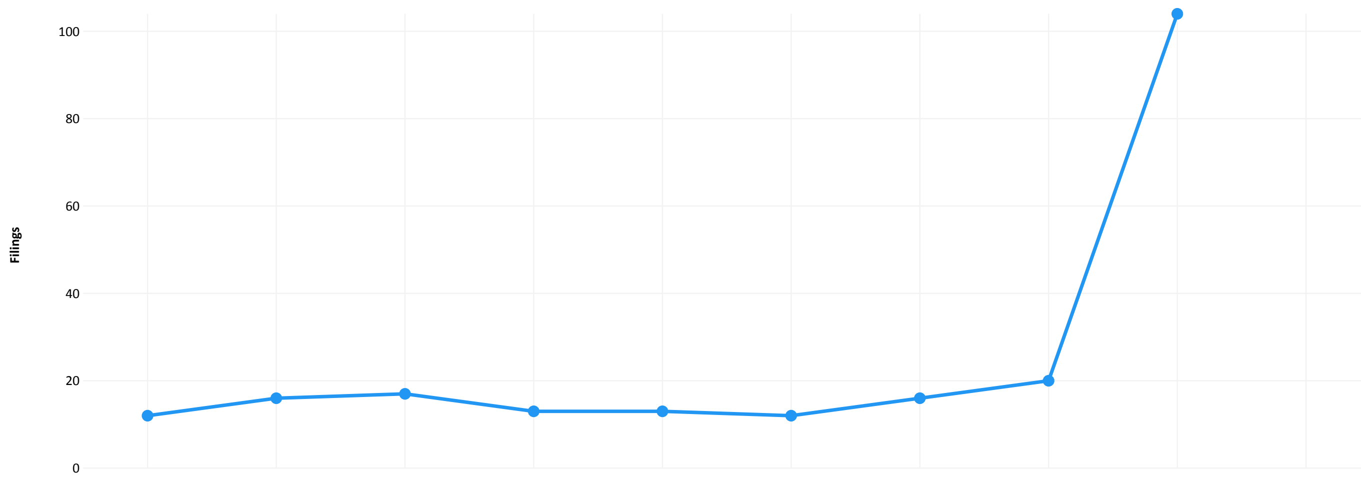


Figure 6: Securities Cases Filed in Delaware from 2009-01-01 to 2018-06-30



	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Securities	12	16	17	13	13	12	16	20	104	94

Case Resolutions and Timing

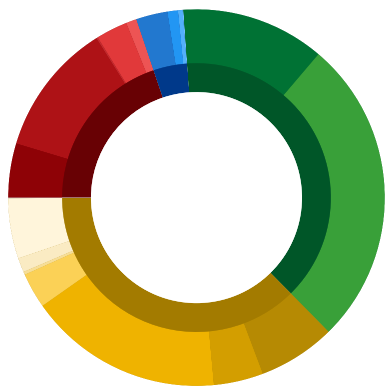
Case resolutions favoring claim defendants are increasing. There have been notable increases in voluntary dismissals by plaintiffs and cases resolving at a judgment on the pleadings. Looking within the Likely Settlement category, the number of stipulated dismissals held relatively steady while the number of plaintiff voluntary dismissals rose drastically, resulting in an increased ratio of plaintiff voluntary dismissals to stipulated dismissals from around 1:2 to 6:5.

Cases resolving on judgment on the pleadings in favor of defendants have increased significantly, resulting in a drop in the ratio of overall claimant win cases to claim defendant win cases from 5:1 to less than 2:1.

Figure 7: Case Resolutions for Securities Cases Terminating from 2015-07-01 to 2016-12-31

Claimant Win	**307**	**20%**
Default Judgment	72	5%
Consent Judgment	177	11%
Judgment on the Pleadings	2	0%
Summary Judgment	42	3%
Trial	14	1%
Judgment as a Matter of Law	0	0%
Decision on Bankruptcy Appeal	0	0%

Claim Defendant Win	**63**	**4%**
Default Judgment	0	0%
Consent Judgment	0	0%
Judgment on the Pleadings	42	3%
Summary Judgment	14	1%
Trial	6	0%
Judgment as a Matter of Law	1	0%
Decision on Bankruptcy Appeal	0	0%



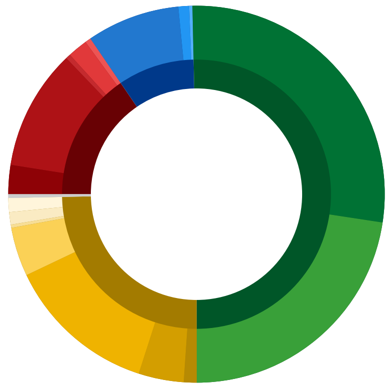
Likely Settlement	**600**	**39%**
Plaintiff Voluntary Dismissal	191	12%
Stipulated Dismissal	409	26%

Procedural Resolution	**578**	**37%**
Contested Dismissal	103	7%
Dismissal	66	4%
Consolidation	259	17%
Severance	0	0%
Interdistrict Transfer	47	3%
Intradistrict Transfer	4	0%
Stay	19	1%
Multidistrict Litigation	80	5%

No Case Resolution	**1**	**0%**

Figure 8: Case Resolutions for Securities Cases Terminating from 2017-01-01 to 2018-06-30

Claimant Win	**335**	**15%**
Default Judgment	54	2%
Consent Judgment	224	10%
Judgment on the Pleadings	9	0%
Summary Judgment	37	2%
Trial	11	1%
Judgment as a Matter of Law	0	0%
Decision on Bankruptcy Appeal	0	0%
Claim Defendant Win	**199**	**9%**
Default Judgment	0	0%
Consent Judgment	0	0%
Judgment on the Pleadings	173	8%
Summary Judgment	20	1%
Trial	6	0%
Judgment as a Matter of Law	0	0%
Decision on Bankruptcy Appeal	0	0%



Likely Settlement	**1,090**	**50%**
Plaintiff Voluntary Dismissal	601	28%
Stipulated Dismissal	489	23%
Procedural Resolution	**535**	**25%**
Contested Dismissal	24	1%
Dismissal	84	4%
Consolidation	281	13%
Severance	0	0%
Interdistrict Transfer	91	4%
Intradistrict Transfer	6	0%
Stay	23	1%
Multidistrict Litigation	26	1%
No Case Resolution	**7**	**0%**

The median time to termination has decreased from a little more than 400 days in the first 18 month period to less than 150 days in the second, likely due to the increase in cases resolving on plaintiff voluntary dismissals and judgment on the pleadings.

Figure 9: Time to Termination for Securities Cases Terminating from 2015-07-01 to 2016-12-31

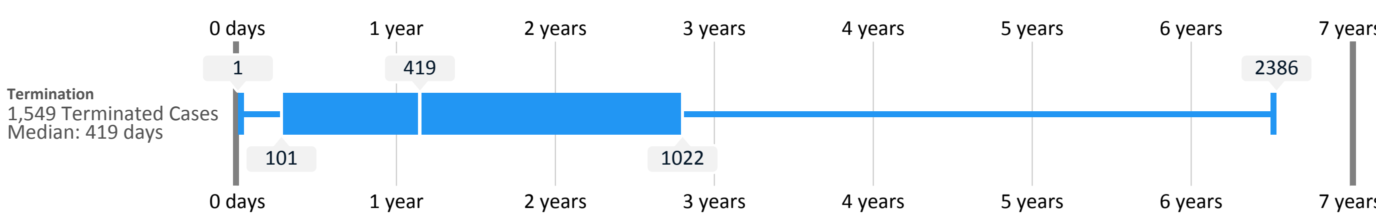
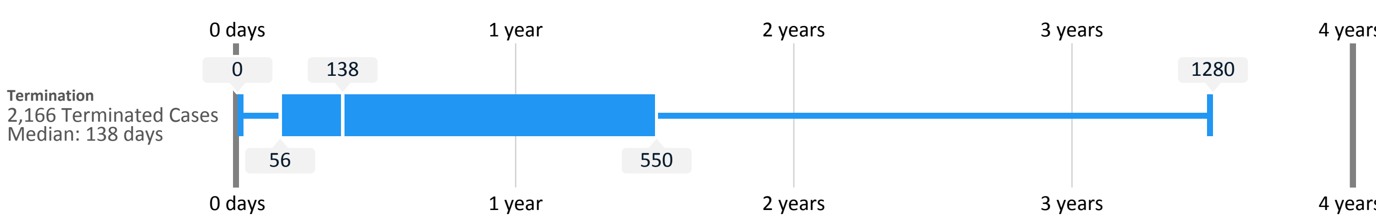


Figure 10: Time to Termination for Securities Cases Terminating from 2017-01-01 to 2018-06-30



Findings and Damages

Claim defendants winning with a judgment on the pleadings have increased dramatically in the most recent 18 months. Findings of “No Exchange Act Violation” rose from 27 to 207 cases and findings of “No Securities Act Violation” rose from 3 to 32 cases. There was also an increase in consent judgments on Securities Act Violations and Exchange Act Violations. Other findings held relatively consistent against their procedural counterparts across the two 18 month periods.

Figure 11: Securities Findings for Cases Terminating from 2015-07-01 to 2016-12-31

Findings	Default Judgment	Consent Judgment	Judgment on the Pleadings	Summary Judgment	Trial	Judgment as a Matter of Law	Any Judgment Event
Securities Act Violation	52	113	0	29	7	0	164
No Securities Act Violation	0	1	3	3	1	0	8
Exchange Act Violation	66	147	2	35	11	0	219
No Exchange Act Violation	0	0	27	11	5	1	44
Other Securities Violation	26	50	0	18	1	0	83
No Other Securities Violation	0	0	2	4	1	0	7
Statute of Limitations Defense	0	1	17	3	0	0	21
No Statute of Limitations Defense	0	0	1	2	0	0	3
Plaintiff Knowledge Defense	0	0	0	1	0	0	1
No Plaintiff Knowledge Defense	0	0	2	1	0	0	3
Cautionary Language / Safe Harbor Defense	0	0	20	1	0	0	21
No Cautionary Language / Safe Harbor Defense	0	0	1	1	0	0	2

Figure 12: Securities Findings for Cases Terminating from 2017-01-01 to 2018-06-30

Findings	Default Judgment	Consent Judgment	Judgment on the Pleadings	Summary Judgment	Trial	Judgment as a Matter of Law	Any Judgment Event
Securities Act Violation	40	181	1	26	5	0	214
No Securities Act Violation	0	0	32	2	3	0	37
Exchange Act Violation	57	223	7	22	9	0	278
No Exchange Act Violation	1	1	207	22	9	1	235
Other Securities Violation	22	61	5	13	2	0	87
No Other Securities Violation	0	0	15	5	1	0	17
Statute of Limitations Defense	0	0	16	5	0	0	21
No Statute of Limitations Defense	0	0	0	0	0	0	0
Plaintiff Knowledge Defense	0	0	0	0	0	0	0
No Plaintiff Knowledge Defense	0	0	0	0	0	0	0
Cautionary Language / Safe Harbor Defense	0	1	20	1	0	0	21
No Cautionary Language / Safe Harbor Defense	0	0	0	0	0	0	0

Lex Machina annotates four types of damages specific to Securities cases: SEC/CFTC Penalties, Disgorgement, Other Securities Damages, and Approved Class Action Settlement.

The amount of damages across all damages types declined. Contributing to the significantly higher damages amounts in the Approved Class Action Settlement category for the first 18 month period is the *Jaffe v. Household Intl. Inc.*, settlement for over $1.5B and the *Merck & Co., Inc., Securities, Derivative & ERISA Litigation*, settlement for over $1B. There were no similarly-sized class action settlements in the second 18 month period, the largest being $210M in *Woburn Retirement System v. Salix Pharmaceuticals, Ltd.*. Lex Machina subscribers can perform customized searches across damages awards based on litigation time-frame, courts, judges, custom party groups, and more, in order to pinpoint case outcomes similar to their clients' circumstances.

Figure 13: Securities Damages Awarded from 2015-07-01 to 2016-12-31

Damages Type	Amount Awarded	Total Cases
SEC / CFTC Penalties	$570,219,390.87	196
Disgorgement	$3,518,097,085.31	232
Other Securities Damages	$675,085,732.83	57
Approved Class Action Settlement	$8,523,573,928.00	142

Figure 14: Securities Damages Awarded from 2017-01-01 to 2018-06-30

Damages Type	Amount Awarded	Total Cases
SEC / CFTC Penalties	$411,740,175.75	251
Disgorgement	$1,870,033,792.71	278
Other Securities Damages	$364,554,563.88	36
Approved Class Action Settlement	$2,186,065,000.00	109

Top Law Firms

Lex Machina provides information about law firms and attorneys by extracting counsel data from raw sources and normalizing the information in order to quickly understand which law firms and individual attorneys are leading the field and their litigation success and settlement rates.

Aside from the SEC, large national firms Levi & Korsinsky, Pomerantz, and The Rosen Law Firm top the list of plaintiffs' firms with the most securities cases filed in the last 18 month period.

Looking separately at which law firms were active for defendants in cases terminating in the most recent 18 month period, Skadden, Arps, Slate, Meagher & Flom tops the list followed by King & Spalding and Paul, Weiss, Rifkind, Wharton & Garrison.

Digging deeper into defense counsel, Skadden, Arps, Slate, Meagher & Flom leads with the most claim defendant wins, followed by Sidley Austin.

*Figure 15: Top Plaintiff Law Firms based on Cases Filed from 2017-01-01 to 2018-06-30 *excludes MDL associated cases*

Plaintiff Firm	Cases
Securities & Exchange Commission	314
Levi & Korsinsky	266
Pomerantz	204
The Rosen Law Firm	199
Robbins Geller Rudman & Dowd	153
Rigrodsky & Long	152
Faruqi & Faruqi	109
Glancy Prongay & Murray	104
Monteverde & Associates	80
WeissLaw	77

*Figure 16: Top Defendant Law Firms based on Cases Terminated from 2017-01-01 to 2018-06-30 *excludes MDL associated cases*

Defendant Firm	Cases
Skadden, Arps, Slate, Meagher & Flom	58
King & Spalding	49
Paul, Weiss, Rifkind, Wharton & Garrison	49
Wilson Sonsini Goodrich & Rosati	47
Gibson, Dunn & Crutcher	41
Sidley Austin	41
WilmerHale	39
Hogan Lovells	38
DLA Piper	37
Latham & Watkins	37

Figure 17: Top Defendant Law Firms with Claim Defendant Wins for Cases Terminating from 2017-01-01 to 2018-06-30

Defendant Firm	Cases
Skadden, Arps, Slate, Meagher & Flom	13
Sidley Austin	10
Latham & Watkins	9
Simpson Thacher & Bartlett	9
Sullivan & Cromwell	9
Goodwin	8
Ropes & Gray	8
Shearman & Sterling	8
Gibson, Dunn & Crutcher	7
Morrison & Foerster	7

Data and Methodology

This report presents data from Lex Machina's Legal Analytics platform. Using machine learning and technology assisted attorney review, raw data is extracted from sources like PACER, EDIS, PTAB, Orange Book, and others, which is then cleaned, tagged, structured, and loaded into Lex Machina's proprietary platform. This report is prepared by the Lex Machina Product Team using charts and graphs from the platform. Commentary is provided by Lex Machina's legal experts for the respective practice area.

Drawing from a data set of over 15,000 cases, this report analyzes recent trends in Securities litigation from United States Federal District Courts. Lex Machina collects cases based upon PACER Nature of Suit (NOS) Codes and Cause of Action (CoA) codes, then analyzes each complaint to confirm it meets Lex Machina's definition of a Securities Case.

Lex Machina supplements and corrects primary data from PACER in a variety of ways, including:

- Correcting errors ranging from spelling mistakes to complex data problems
- Normalizing data on judges, parties, law firms, and attorneys
- Extracting records of law firms and attorneys not found in docket reports
- Tagging and categorizing cases
- Annotating case resolutions, damages, and dispositive rulings

Lex Machina's Securities Litigation data is derived from trial court proceedings before the U.S. Federal District Courts and does not include appeals, modifications of judgments on appeal, or state court cases.

What is a Securities Case?

A case with one or more claims of securities law violation brought under the Securities Act of 1933, the Securities Exchange Act of 1934, or other federal securities laws (including the Commodity Exchange Act of 1936, Trust Indenture Act of 1939, Investment Company Act of 1940, Investment Advisers Act of 1940, Sarbanes-Oxley Act of 2002, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the Jumpstart Our Business Startups Act of 2012).

What Kinds of Data Does Lex Machina's Offer?

Lex Machina maintains a specialized database containing information about litigation in U.S. District Courts, the Delaware Court of Chancery, the U.S. Patent and Trademark Office's Patent Trial and Appeal Board, and the U.S. International Trade Commission. On a daily basis, Lex Machina requests and receives data from the various district courts' PACER systems on new cases and docket entries filed. Lex Machina's automated systems ensure the completeness and consistency of this data, before analyzing it in conjunction with other data sources.

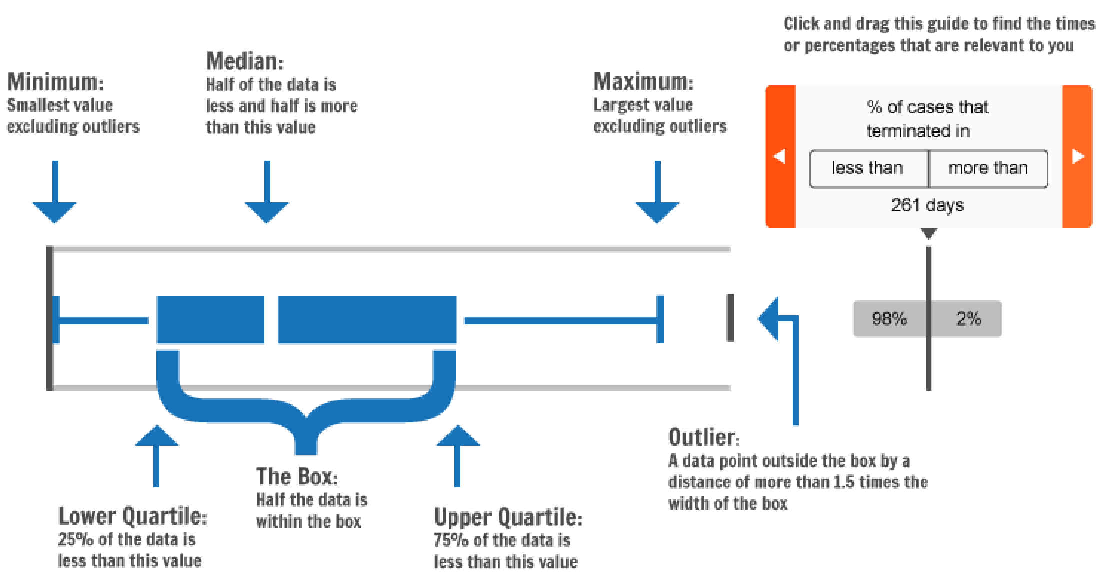
Understanding Boxplots

Lex Machina's analytics use a data visualization known as the boxplot to convey information about the timing of significant events in a case. Knowing how to interpret this data gives you an advantage when it comes to strategy, budgeting, and setting expectations, as well as in other decisions that involve case timing.

Consider a newly filed case: Case timing matters to both outside counsel working to determine a retainer amount or whether two trials will overlap, as well as in-house counsel estimating their legal spend and evaluating a firm's proposed budget. Knowing the lower and upper bounds of how long it may reasonably take the case to reach injunction can give counsel a strategic advantage over opponents lacking such nuanced information. Moreover, knowing the best and worst case scenarios for timing, or exactly how likely it is that a case will be active in 6 months, enables more far-sighted contingency planning.

A boxplot summarizes a series of data points to help illustrate the shape, or distribution of the values in those points. The boxplot is drawn based on five numbers: the median, the upper and lower quartiles, and the whiskers for a distribution.

Figure 18: Paying attention to these key parts of the plot will help you quickly understand what you need to know.



Although boxplots provide a wealth of information, the four observations below, in order from simplest onwards, are all one needs to easily grasp the significance of a boxplot.

Median

•The middle dividing line of the box splits the data points evenly so that 50% fall to either side. It's a form of average that gives a single number representation of what to reasonably expect.

Box bounds

• The box encloses the middle-most 50% of the datapoints (from the 25th percentile to the 75th), with 25% of the datapoints falling outside to either side. This makes the box a good representation of the range one can reasonably expect.

Box compressed or elongated

• A more compressed box means that more datapoints fall into a smaller range of time and therefore are more consistent; in contrast a longer box means that the datapoints are spread out over a wider time period and are therefore less predictable.

Whiskers

• Whiskers are drawn to show the outside bounds of reasonable expectation, beyond which datapoints are considered outliers. By statistical convention, boxplots define outliers as points beyond more than 1.5 times the width of the box (sometimes called the “interquartile range”).