



PROFESSIONAL LIABILITY UNDERWRITING SOCIETY

A Look Beyond the Border

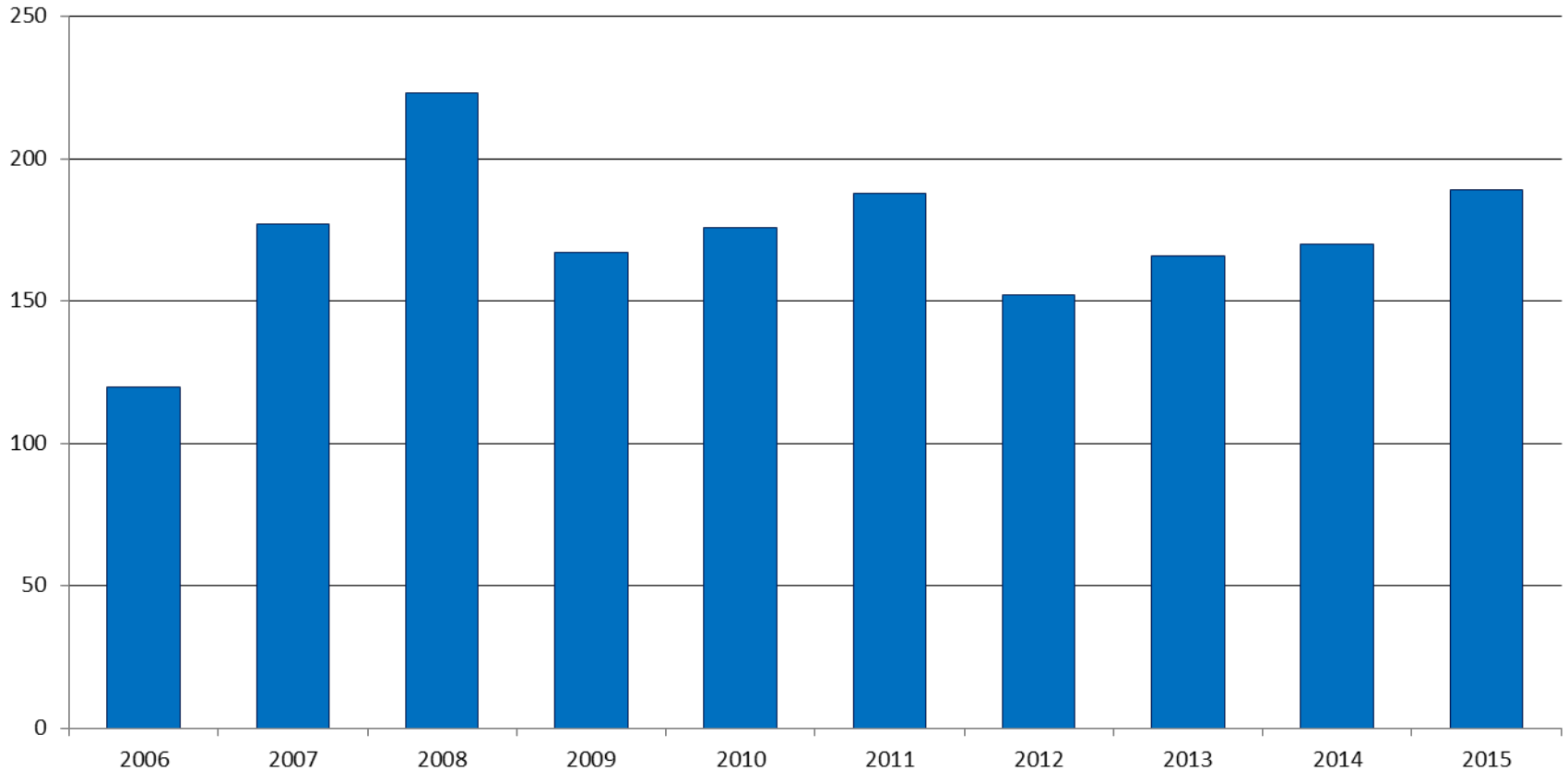
Un regard au-delà des frontières

Presenters/Présentateurs: Mylène Côté, François Jean, Kevin LaCroix and John Trefry



U.S. Securities Class Action Lawsuits, 2006-2015 (1996-2014 Average = 189)

Number of Securities Class Action Lawsuits





Number of U.S Listed Companies

Year	Number of Companies
1997	8,884
>>>>>>	>>>>>
2000	7,994
>>>>>>	>>>>>
2015	5,305



Annual Likelihood of U.S.-Listed Company Experiencing a Securities Suit

Time Period	Percentage Likelihood
1996-2014 Annual Average	2.6%
2012	3.1%
2013	3.4%
2014	3.6%
2015	4.0%

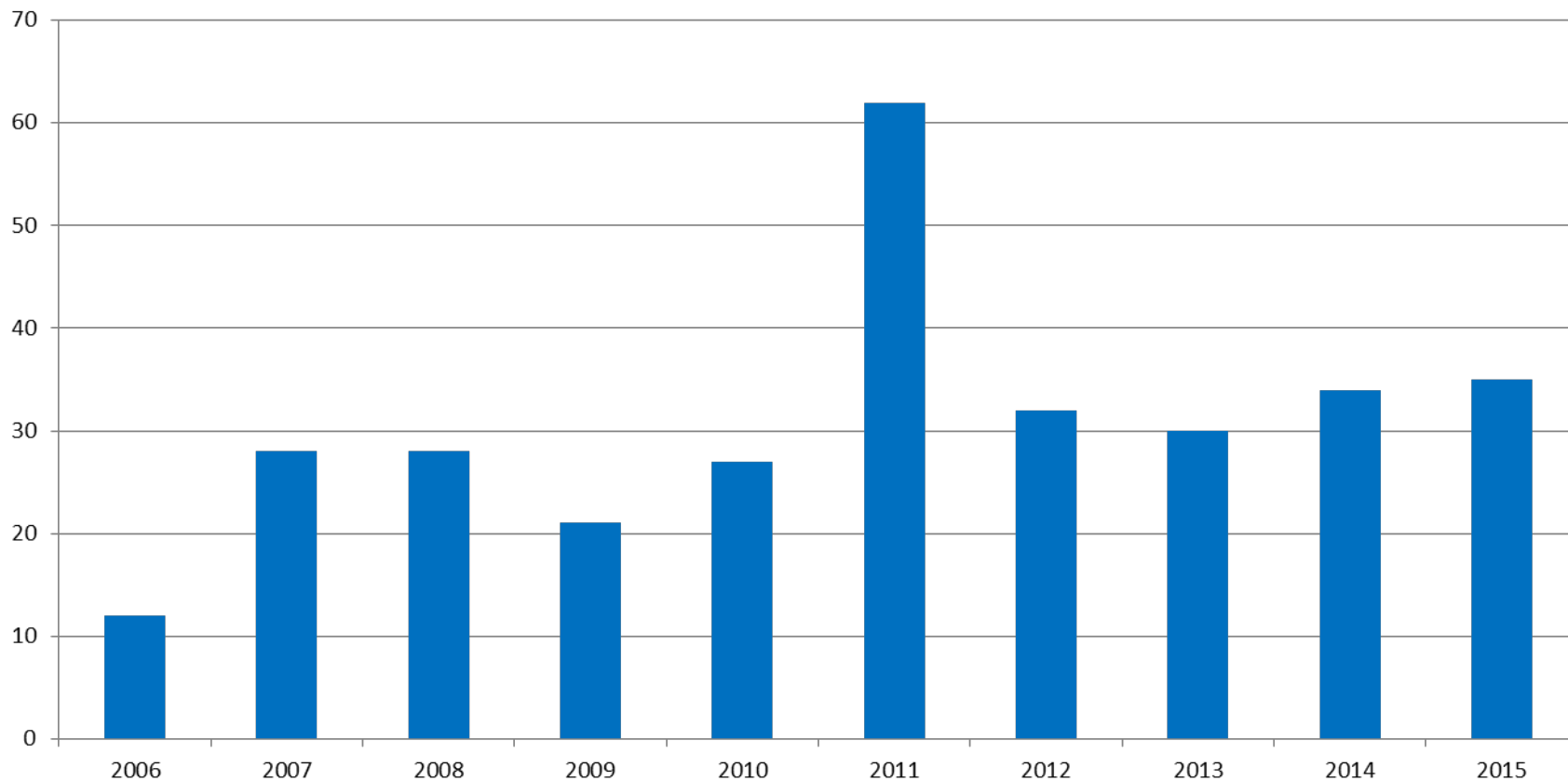


- Cornerstone Research
 - “In 2015, companies listed on U.S. exchanges were **more likely to be the target of a class action** than at any time in the data.”
 - “Approximately **one in 25 companies** listed on U.S. exchanges (4.0 percent) was the subject of a class action in 2015.”



Number of Non-U.S. Companies Sued (1996-2014 Average = 22)

Number of Non-U.S. Companies Sued





Non-U.S. Companies: Percentage of U.S. Listings, Percentage of U.S. Securities Suits (Source: NERA Economic Consulting, Cornerstone Research)

Year	% of U.S. Listings	% of U.S. Securities Suits
2008	15.7%	12.6%
2009	15.7%	12.6%
2010	15.8%	15.3%
2011	16.4%	32.3%
2012	16.6%	21.0%
2013	16.3%	18.0%
2014	16.5%	20.0%
2015	17.0%	18.0%
1996-2014 Average		11.0%



Likelihood of Securities Class Action Lawsuit (2015)

Type of Company	Percentage Likelihood
All U.S. Listed Companies	4.0% [1996-2014 average = 2.9%]
S&P 500 Companies	2.6%
Non-U.S. Companies w/ U.S. Listing	4.1%



Home Countries of Non-U.S. Companies Sued (2015 Securities Class Action Lawsuits)

Country	Number of Companies Sued
China/Hong Kong	15
Brazil	3
Israel	2
All Others (14 Countries)	14



Merger Objection Litigation (Source: M. Cain & S. Davidoff, "Takeover Litigation in 2015")

Year	Deals	Litigation	% of Deals with Litigation
2005	183	72	39.3%
>>>>>>	>>>>>>>>	>>>>>>>>	>>>>>>
2011	128	117	91.4%
2012	121	111	91.7%
2013	80	78	97.5%
2014	79	75	94.9%
2015	73	64	87.7%

- Disclosure-Only Settlements
- Defendants Agree to:
 - Supplemental Disclosures
 - Payment of Plaintiff’s Counsel’s Attorneys’ Fees
- Defendants Obtain Full Release
 - Including Even “Unknown Claims” (“Intergalactic Release”)



The End of Disclosure-Only Merger Objection Lawsuit Settlements

Date	Court	Case	Ruling
9 Oct 2015	Del. Chancery	H-P/Aruba Networks	“Systemic problem” that has resulted in a “misshapen legal system”
23 Oct 2015	N.Y. Supreme Court	Allied Healthcare	Settlements “reflect poorly on the profession and on the courts”
22 Jan 2016	Del. Chancery Court	Trulia/Zillow	“none of the supplemental disclosures were material or even helpful”

- FCPA
- Antitrust/Competition
- Environmental
- Sanctions (e.g., Money Laundering)



Significant Recent U.S. Securities Class Action Lawsuits Following Corruption Allegations

Date	Company	Court	Country of Domicile
11/30/2014	Cobalt Energy Group	S.D. Tex.	U.S.
12/8/2014	Petro Brasileiro, S.A. (Petrobras)	S.D.N.Y.	Brazil
3/19/2015	Sociedad Química y Minera de Chile, S.A. (SQM)	S.D.N.Y.	Chile
7/1/2015	Braskem, S.A.	S.D.N.Y.	Brazil
7/23/2015	Cetrais Elétricas Brasileiras (Eletrobras)	S.D.N.Y.	Brazil
11/4/2015	VimpelCom, Ltd.	S.D.N.Y.	Netherlands

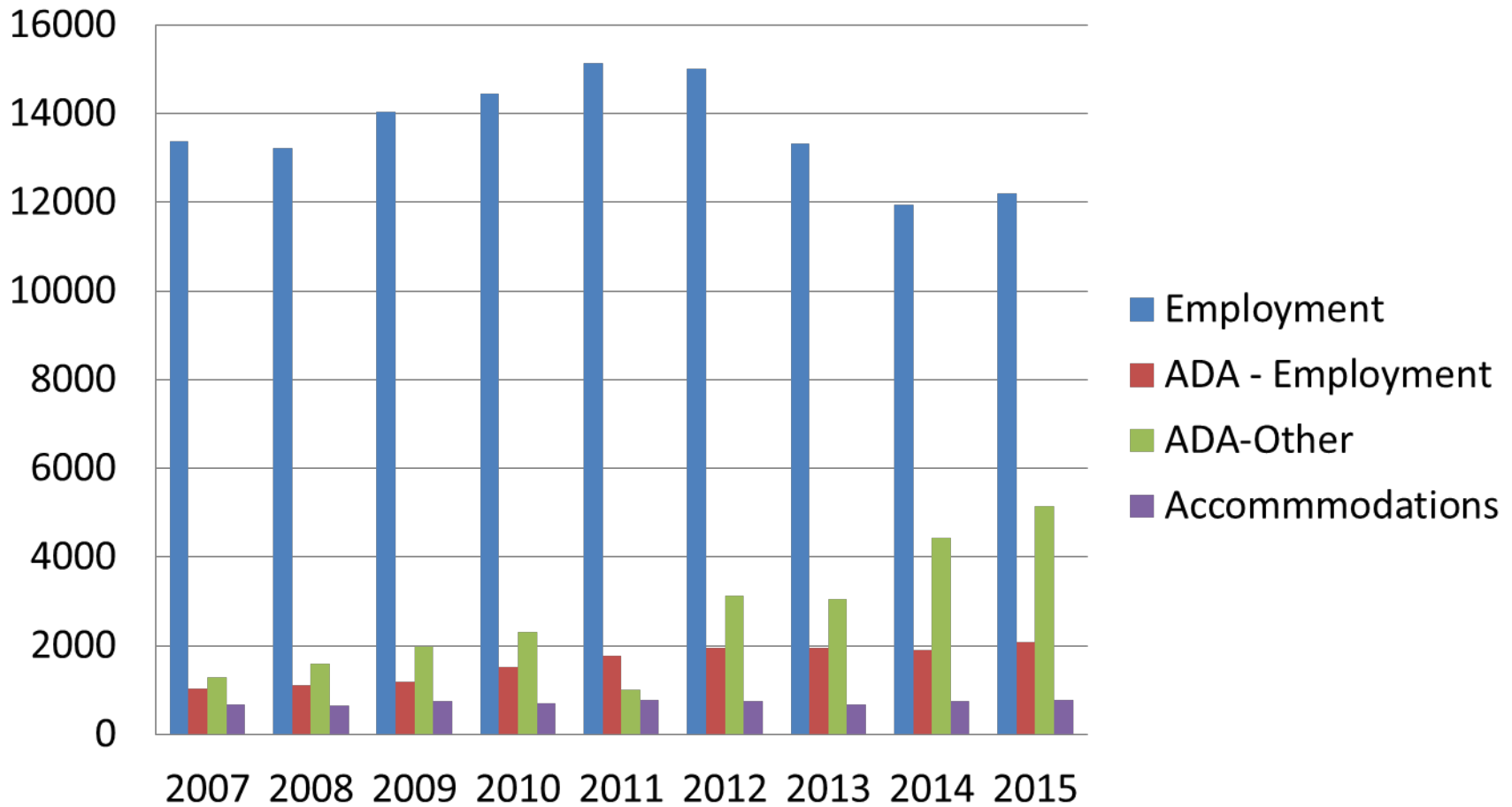


Recent U.S. Securities Class Action Lawsuits Involving Chinese Bribery Investigations

Date	Company	Court	Country of Domicile
9/3/14	PetroChina, Ltd.	S.D.N.Y.	China
1/21/14	NuSkin Enterprises	D. Utah	China
6/21/13	China Mobile Games and Entertainment	S.D.N.Y.	China



Number of Civil Rights Cases Filed in U.S. District Courts 2007-2015 (Source: uscourts.gov)





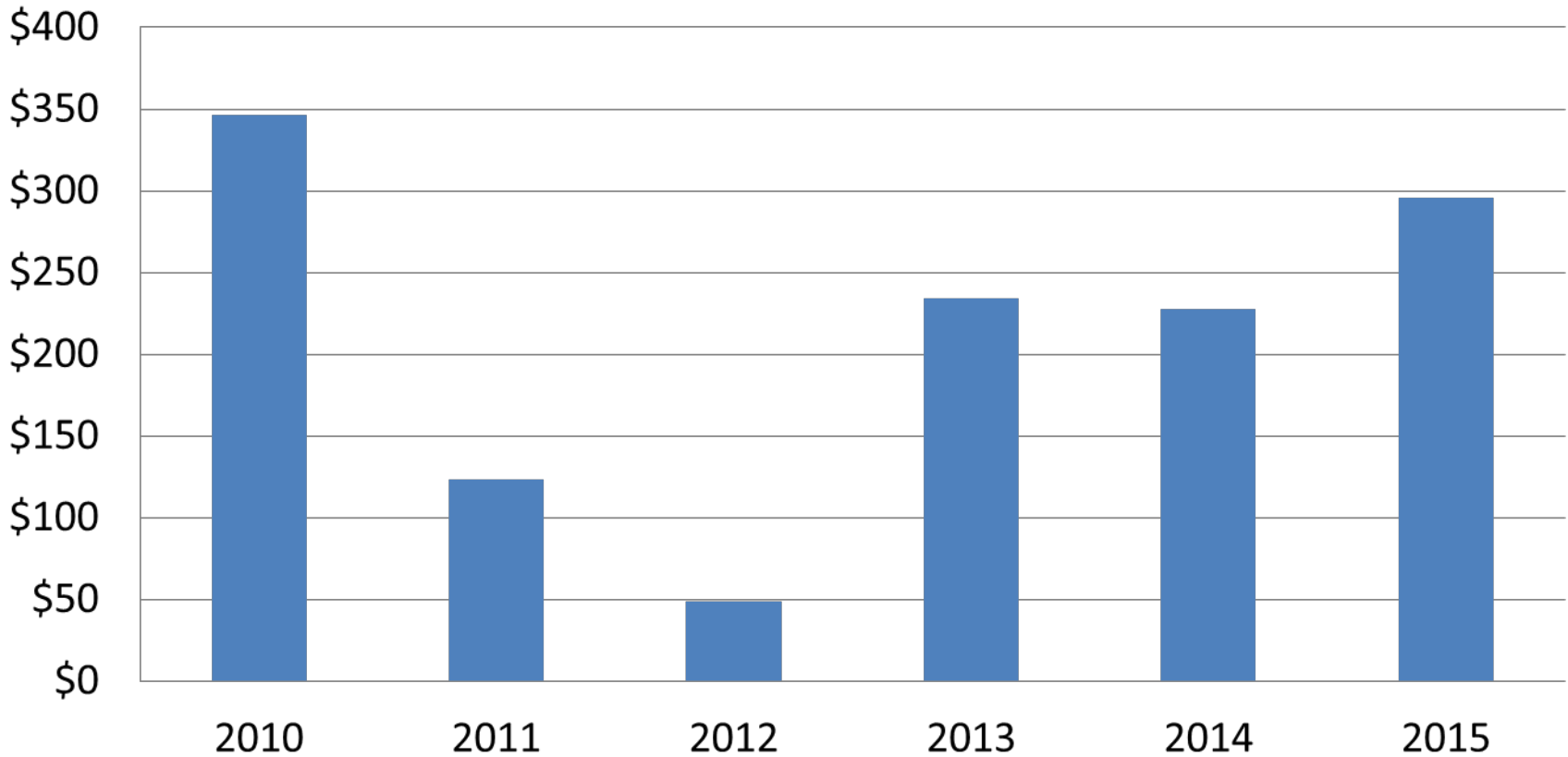
U.S. Employment Practice Liability Compensatory Awards 2008 -
2014 (Source: Employment Practice Liability: Jury Award Trends and
Statistics 2015 ed. Jury Verdict Research)

- Median EPL Compensatory Award for all plaintiff verdicts is \$244,000.
- Mean EPL Compensatory Awards for all plaintiff verdicts is \$455,583.
- EPL Compensatory Awards ranged from \$1 to \$42.7M
 - 43% of awards were under \$100,000
 - 44% of awards were between \$100,000 and \$749,000
 - 15% of awards were \$750,000 or more (with 4% being \$2MM or more)
 - Whistleblower cases had the largest award median at \$282,868
 - The award median for discrimination claims was \$188,163



Top Ten Private Plaintiff Employment Discrimination Settlements
2010 -2015 (Source: Seyfarth Shaw's Annual Workplace Class Action
Litigation Report: 2016 Edition)

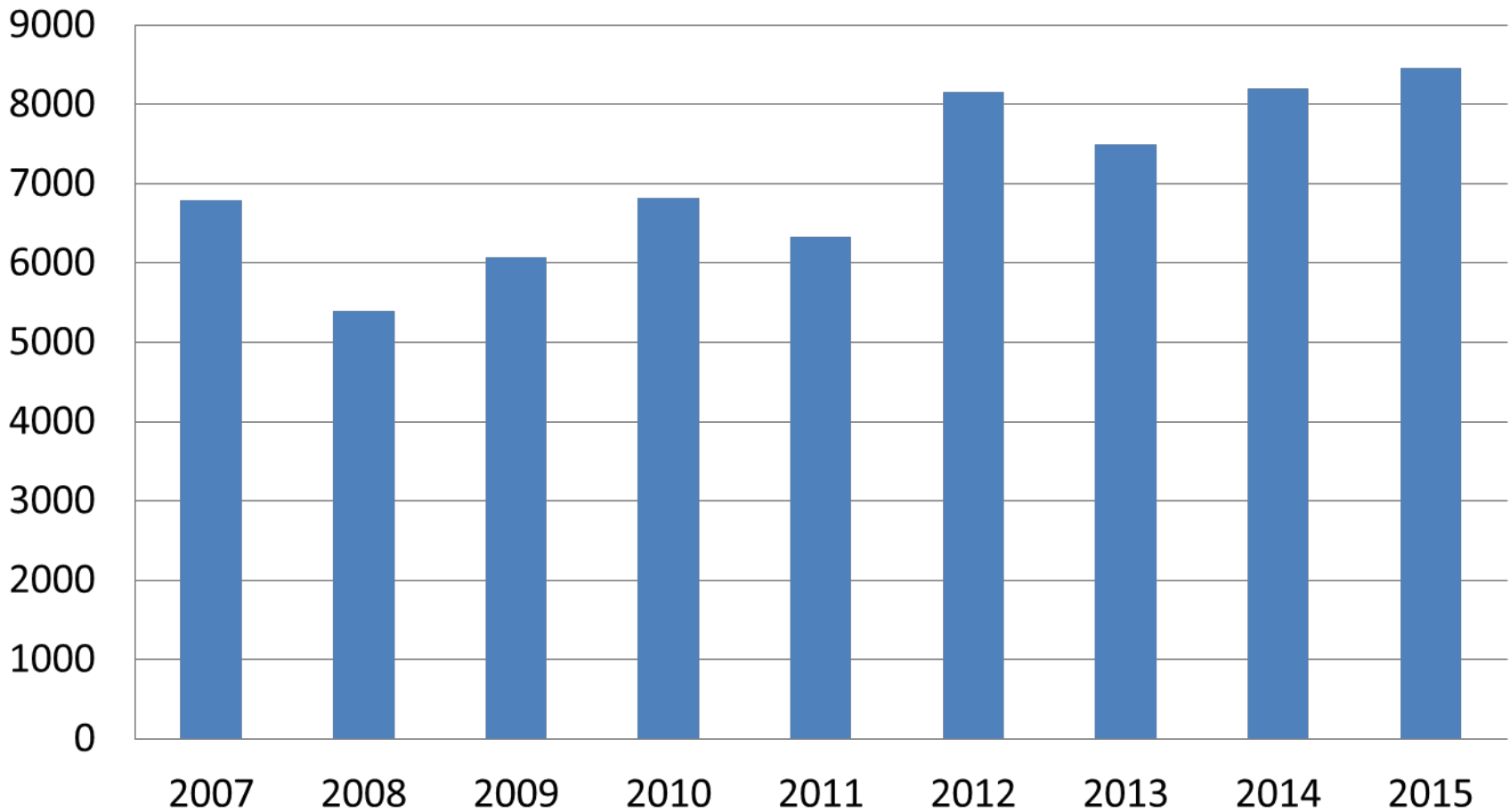
Settlements In Millions





Number of Fair Labor Standards Act Cases Filed in U.S. District Courts 2007-2015

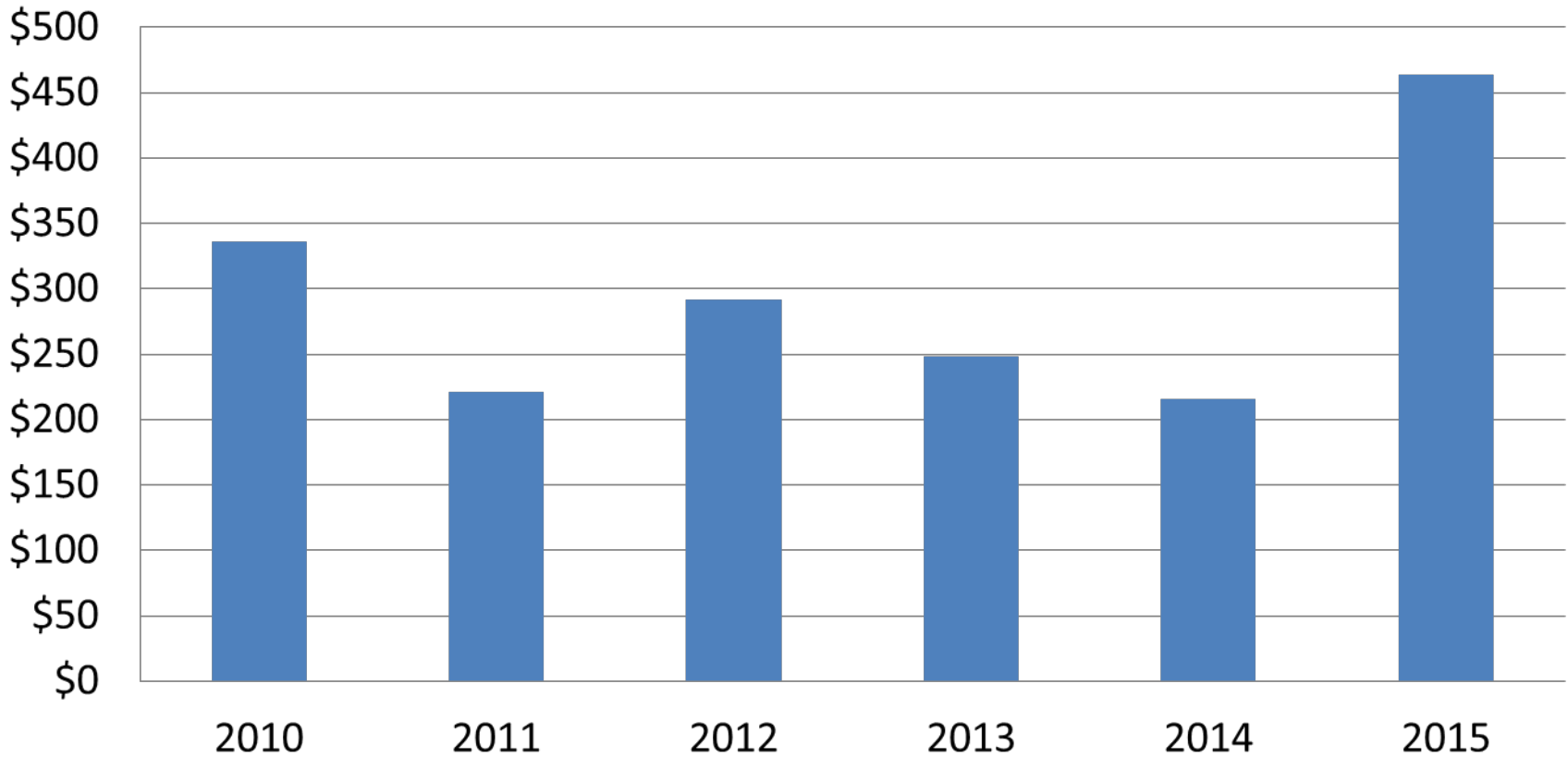
(Source: uscourts.gov)





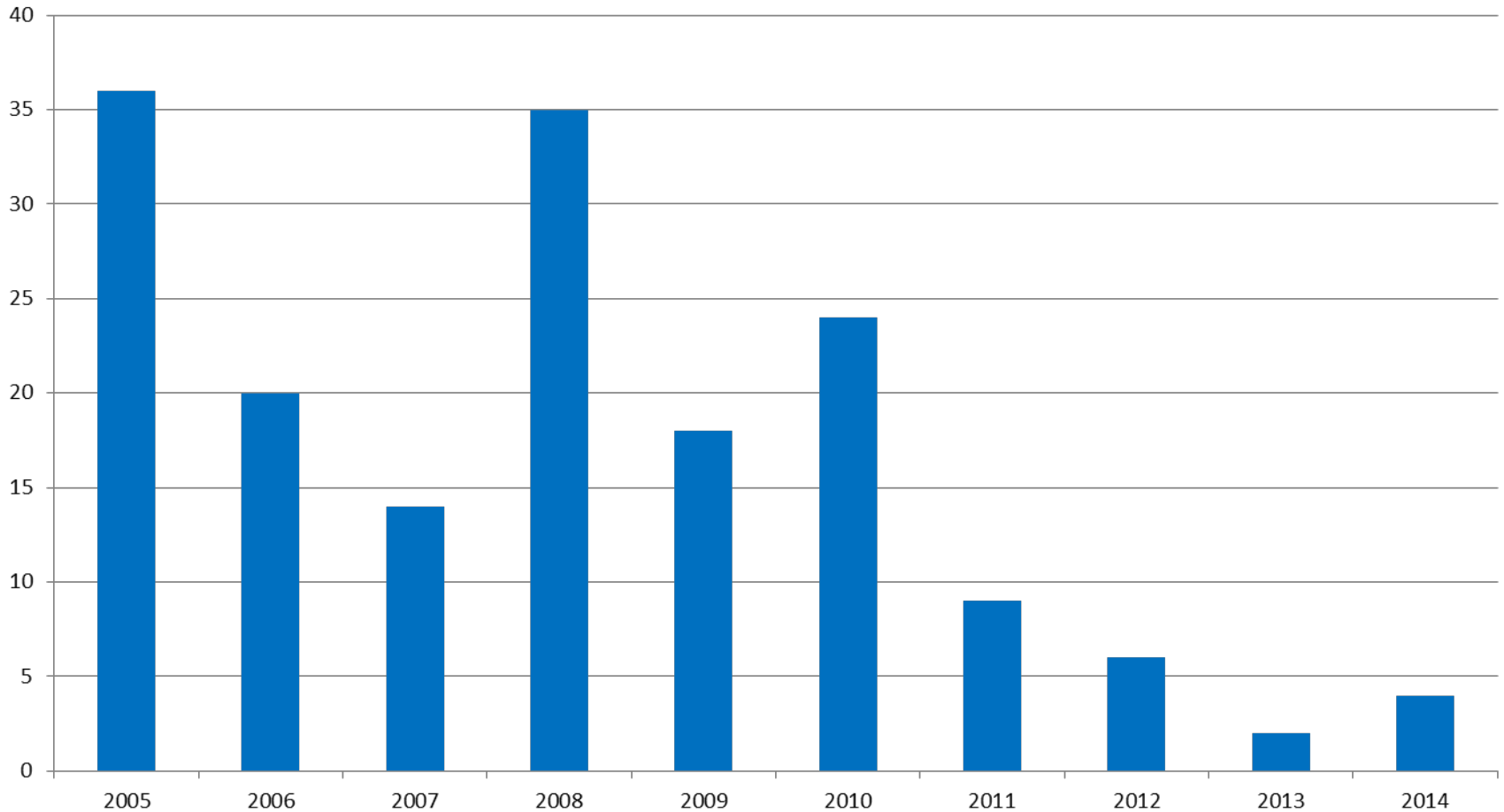
Top Ten Private Plaintiff Wage and Hour Settlements 2010 -2015
(Source: Seyfarth Shaw's Annual Workplace Class Action Litigation Report:
2016 Edition)

Settlements In Millions





Number of ERISA Company Stock Drop Case Filings 2006-2015 (Source: Cornerstone Research)





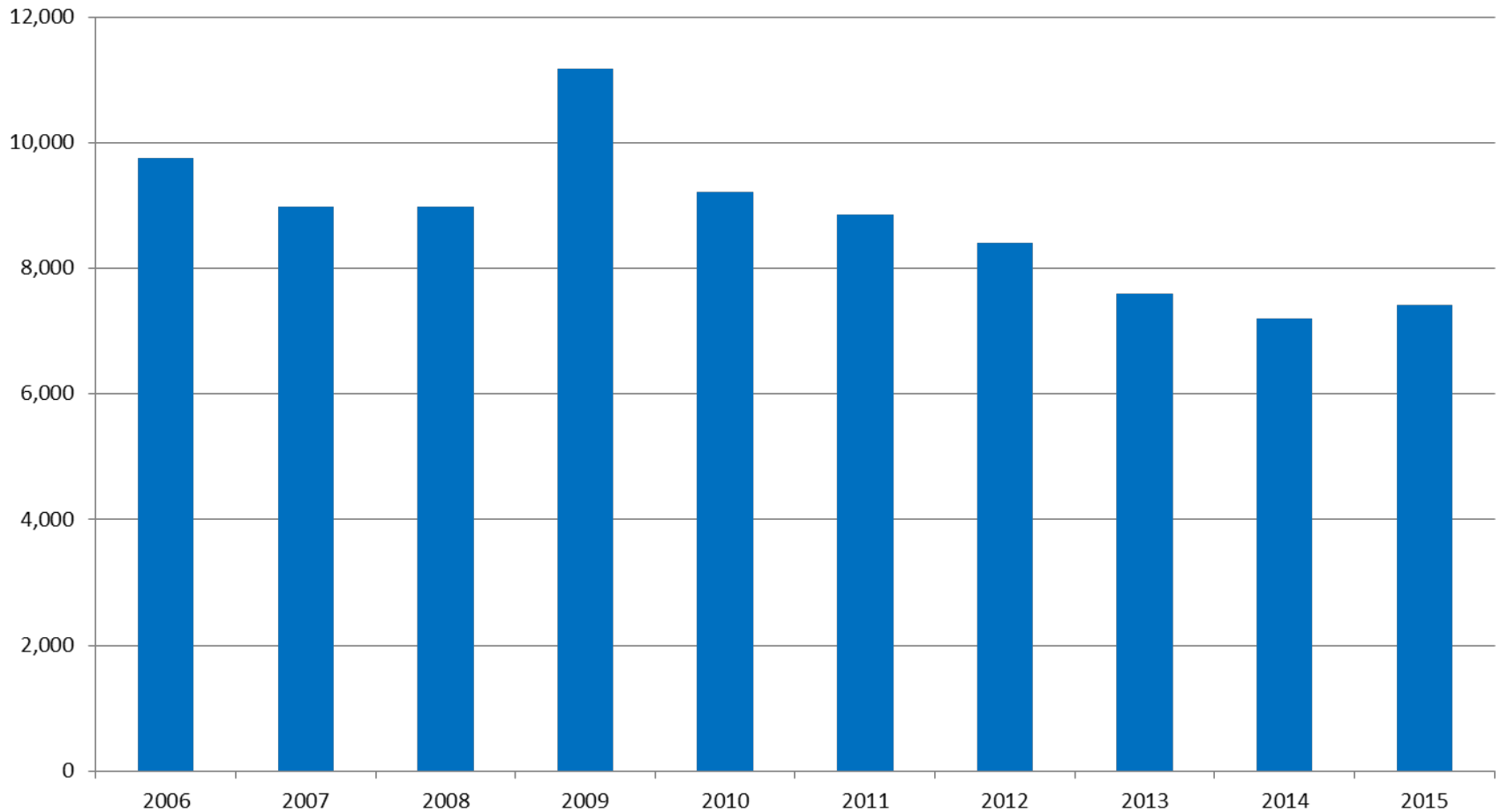
ERISA Company Stock Drop Settlements

(Source: Cornerstone Research)

- Average Settlement Amount: \$31.4M
- Median Settlement Amount: \$6.5M



Number of ERISA Civil Cases Filed in U.S. District Courts 2006-2015 (Source: uscourts.gov)





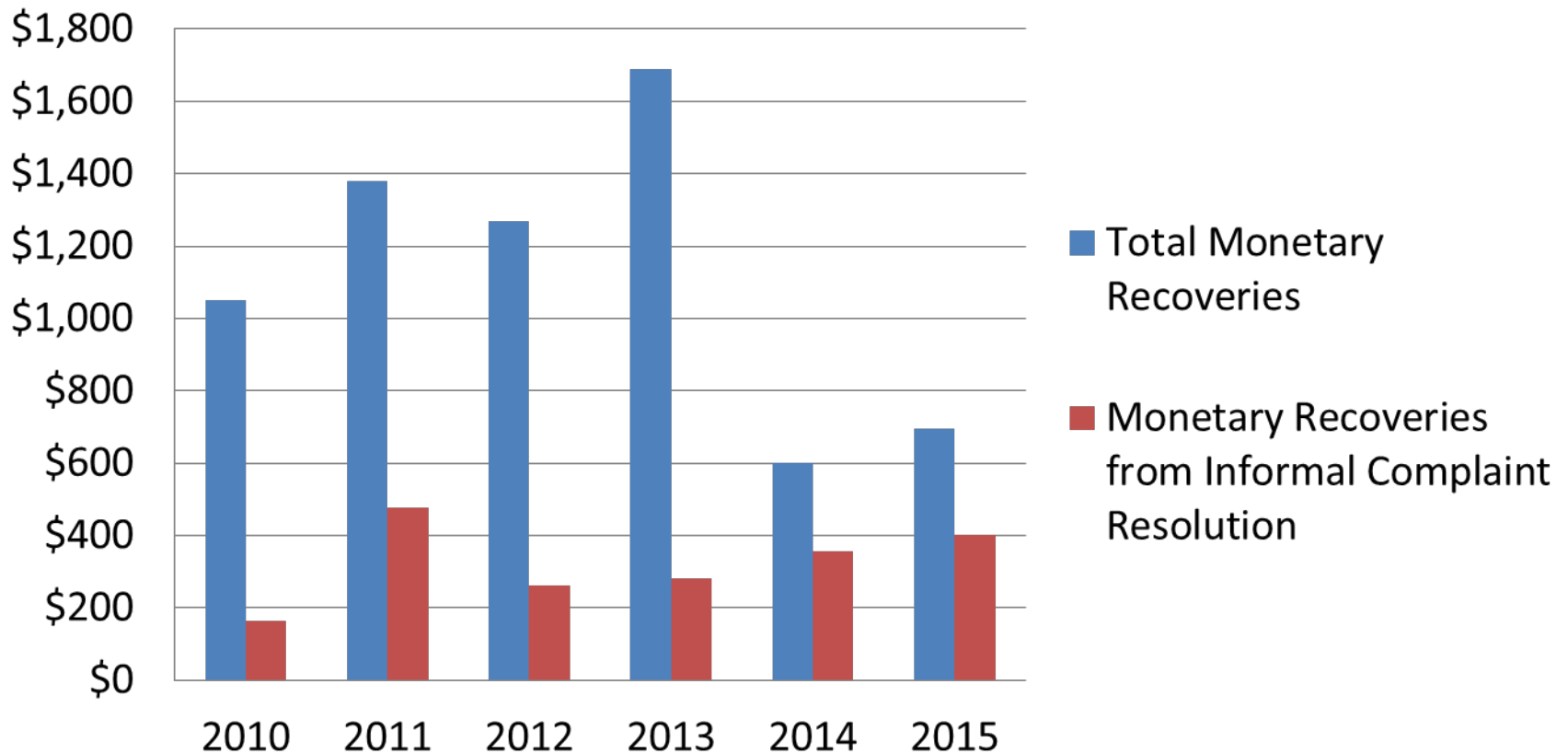
401(k) Excessive Fee Litigation

(Source: groom.com, unless noted otherwise)

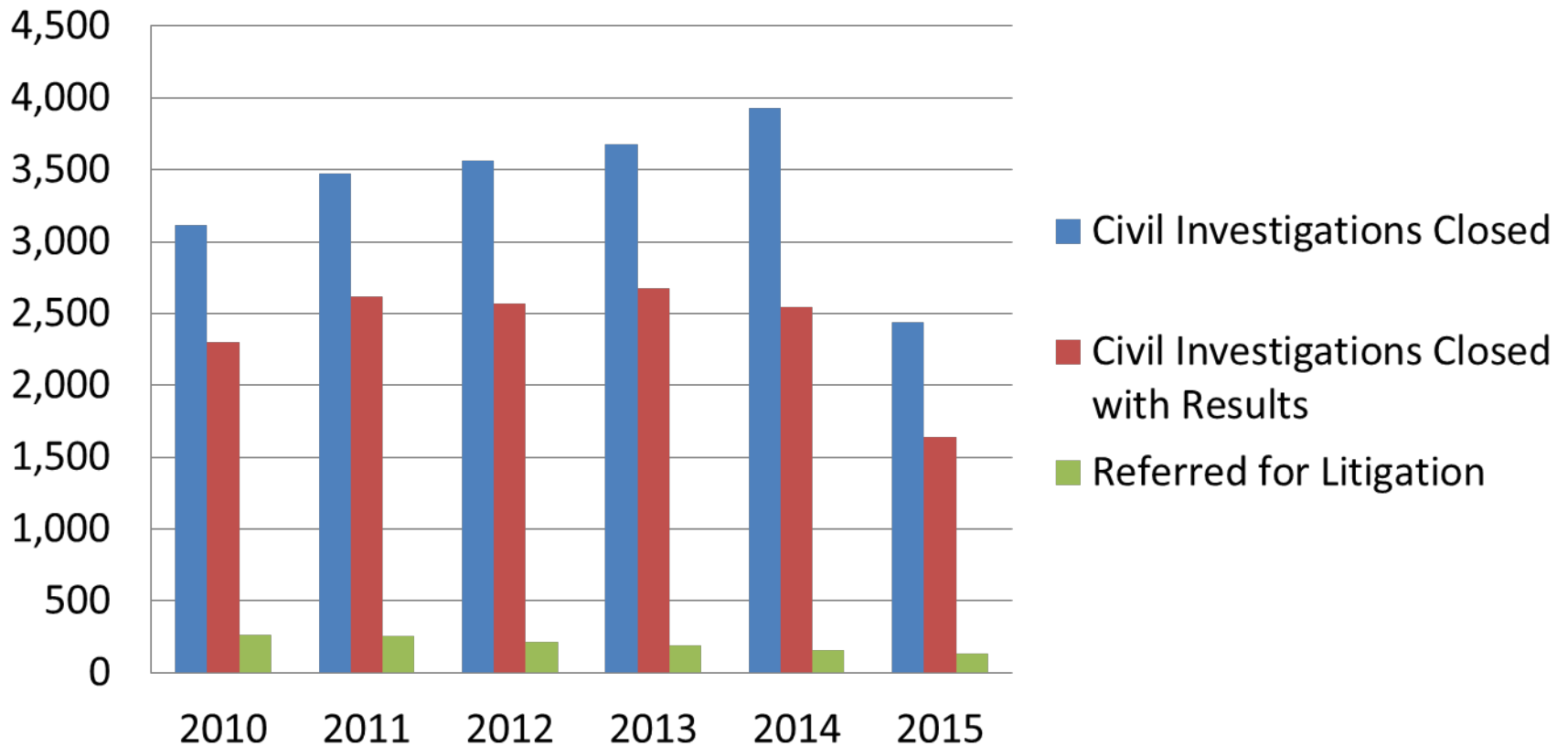
Company	Date of Judgment/ Settlement/ Approval	Resolution Date
Caterpillar, Inc.	Oct-28-10	\$16.5M
General Dynamics	Nov-22-10	\$15.15M
Bechtel Corp.	Mar-11-12	\$18.5M
Kraft Foods	Jun-26-12	\$9.5M
Wal-Mart	Mar-19-12	\$13.5M
ABB, Inc.	Mar-31-12	\$36.9M (under appeal)

Company	Date of Judgment/ Settlement/ Approval	Resolution Date
Cigna	June-24-13	\$35M (Source: pionline.com)
International Paper	Jan-31-15	\$30M
Lockheed Martin	Jul -20-15	\$62M
Ameriprise	Mar-26-15	\$27.5M (Source: plansponsor.com)
Boeing Corp.	Nov-5-15	\$57M (Source: Chicago Tribune)

Recoveries (In Millions)



U.S. DOL ERISA Civil Investigations



- **Target Corporation: Two Shareholders Derivative Lawsuits (D. Minn. 2014)**
 - Claims for Breach of Fiduciary Duty for Failure to Take Steps to Protect Company
- **Wyndham Worldwide Corporation: Shareholders Derivative Lawsuit (D.N.J. 2014)**
 - Claims for Breach of Fiduciary Duty for Failure to Ensure that Company had Adequate Safeguards
- **Home Depot Corporation: Shareholders Derivative Lawsuit (N.D. Ga. 2015)**
 - Alleged Fiduciary Duty Breach for failing to ensure that Home Depot took reasonable measures to protect its customers' personal and financial information

- Wyndham Worldwide Case Dismissed
- No New Data Breach D&O Lawsuits Since September 2015
- Numerous High Profile Data Breaches (Anthem, Sony Pictures Entertainment)

- Federal Trade Commission
 - Wyndham Worldwide
 - August 2015: Third Circuit Upholds FTC’s authority to pursue “deceptive trade practices” claim
 - September 2015: Wyndham settles with FTC; agrees to information security program, annual audits
- Securities and Exchange Commission
 - Oct. 2011: Cybersecurity Disclosure Guidance
 - Corporate Finance Division monitoring disclosures
 - Likelihood of Cyber Disclosure Enforcement Action?



Current State of Play for D&O Cybersecurity Litigation

- Private Plaintiffs Still Seeking their Best Approach
- Regulators Active, Interested in Making Examples
- Disclosure-Related Issues Could Lead to Both Private and Regulator Action

- ACA Mandates and Potential Employer Liability: potential liability arising from
 - applicability of ERISA to the ACA’s requirements;
 - the ACA’s whistleblower protections and anti-retaliation provisions;
 - potential liability for workplace restricting actions

- **Dave & Buster's (S.D.N.Y. Feb. 2016)**
 - Employees' hours reduced to change full-time work for to part-time, exempt from ACA
 - Class Action filed on behalf of all affected workers
 - District Court denies motion to dismiss, holds that plaintiffs' complaint
 - “intentionally interfered with her current health-care coverage, motivated by [their] concern about future costs”
 - stated a valid claim for recovery under ERISA