

Private Enforcement of the Federal Securities Laws

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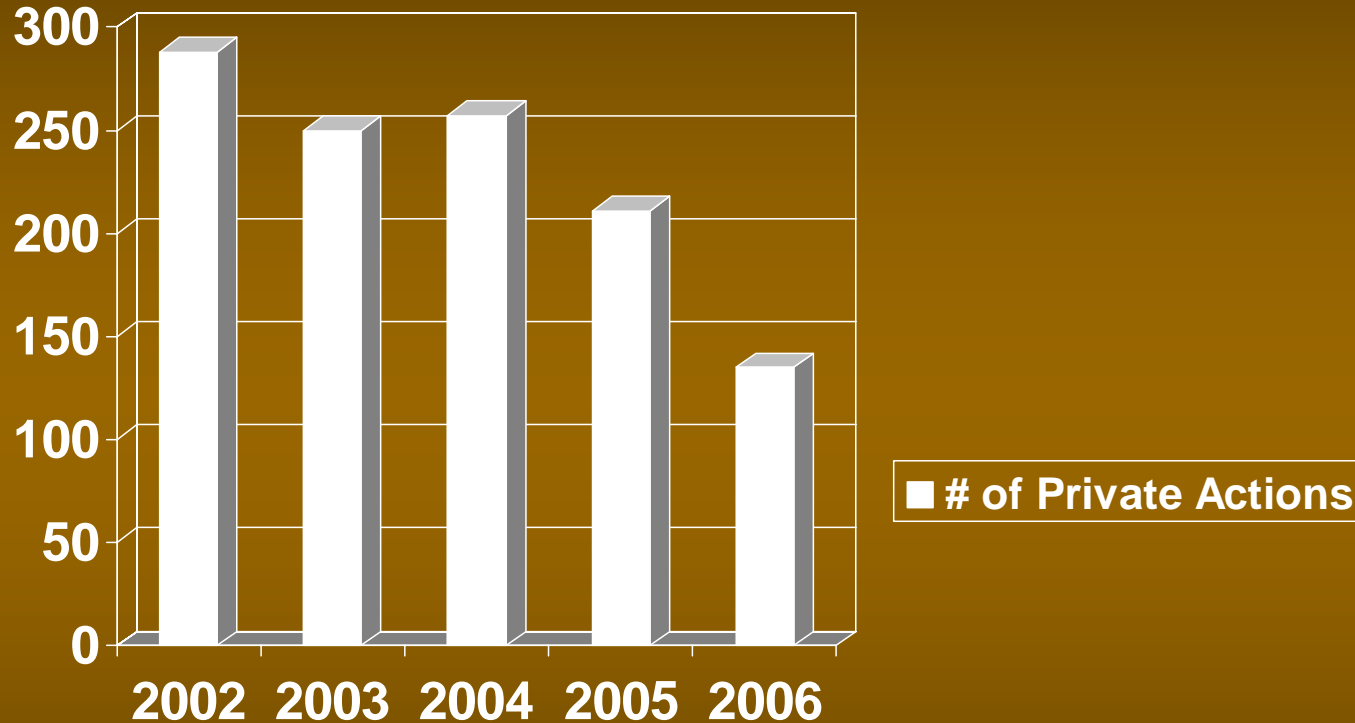
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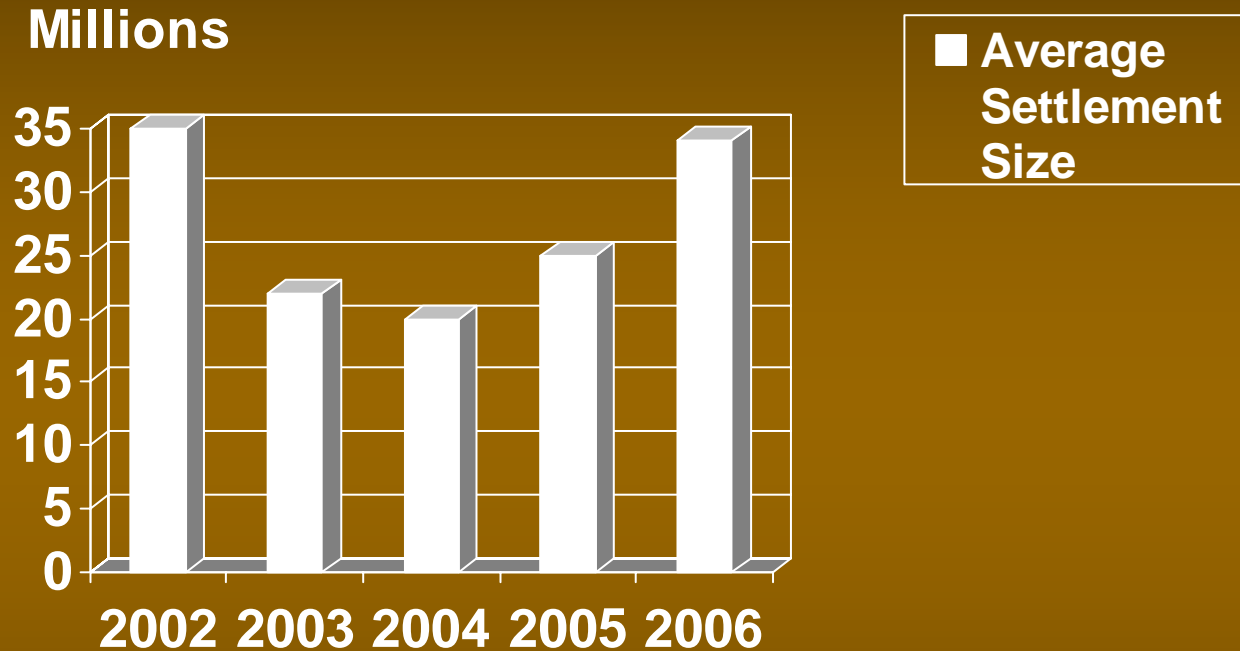
Law School

Number of Private Actions



Source: NERA, Recent Trends in Shareholder Class Action Litigation...(2007)

Average Settlement Size



NERA, Recent Trends in Shareholder Class Action Litigation (2007)

Recent Research on Institutional Lead Plaintiffs

- Lead plaintiff provision of PSLRA is working
- Institutional participation as lead plaintiffs has soared to around 30% of all class actions
- Institutional lead plaintiff's participation has been found to lead to higher settlements, lower attorney's fees, and better litigated cases



Important Developments at the Supreme Court and the SEC

- Supreme Court granted cert. in Tellabs, probably to raise the pleadings standard
- SEC files brief in support of higher threshold
- SEC enforcement actions have been dropping by 10% a year for past several years
- Supreme Court has taken other securities cases and could cut back further



Some Problems with Private Enforcement

- Is private enforcement against foreign issuers a problem? Claims that foreign firms won't list in the US because of threat of securities fraud litigation. Only anecdotal evidence on this question.
- Circularity problem that arises in FOM cases when the issuer is not the seller
- Pay to Play allegations – Disclosure to the Court is adequate remedy



What to do about these problems?

- Want to continue to continue to decrease the agency costs of litigation – tinker with PSLRA's standards
- Consider refocusing remedy in class actions toward deterrence of individual wrongdoers, but this will be very difficult politically
- If we weaken shareholder's litigation rights, we need to strengthen their other rights, such as voting and selling into change of control transactions

