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SIZE OF D&O SETTLEMENTS EXPLODING

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Just two or three years ago, it would have been difficult to identify any settlement or judgment of more than \$100 million in a "typical" D&O lawsuit. For a variety of reasons, even the most dangerous cases for directors and officers to defend from a liability or damages standpoint were resolved for less than \$100 million. However, since mid-1999, the size of D&O settlements, particularly in securities class action lawsuits, has increased dramatically. During that time period, there have been nearly twenty settlements or judgments in excess of \$100 million, with at least one-third of those being in excess of \$200 million.

The following summarizes many of those recent blockbuster settlements and judgments, as described in published reports:

1. A \$2.83 billion dollar settlement in a shareholder class action against Cendant Corp. and its directors and officers. The lawsuit alleged that the defendants artificially inflated the company's stock price through an accounting fraud, which resulted in the company restating its financial statements for several years. The lead plaintiffs in the litigation were three of the country's largest public pension funds, New York State Common Retirement Fund, New York City's Pension Funds, and the California Public Employees Retirement System.
2. A \$600 million settlement in securities fraud, ERISA and derivative lawsuits against Lucent Technologies and its directors and officers. The lawsuits arose from Lucent's December 2000 announcement that its pro forma fourth quarter results had to be substantially reduced to reflect the fact that revenue had been improperly recognized. The lawsuits further alleged that the defendants misrepresented and failed to disclose material information regarding the company's financial condition and performance, as well as business prospects. The company's stock price dropped during the class period from more than \$80/share to less than \$12/share, reportedly giving rise to the largest damage exposure in securities class action history.
3. A \$490 million settlement in a securities fraud lawsuit against Bank of America and certain of its directors and officers. The lawsuits alleged that both prior and after the merger between Bank America and Nations Bank, the defendants made misrepresentations regarding the effects of the merger, as well as the extent of loss exposure for certain loans or investments. Approximately \$200 million of the settlement was funded by insurance.
4. A \$457 million settlement in a securities class action against Waste Management and its directors and officers. The lawsuit alleged that the defendants misrepresented material facts regarding the company's 1998 merger with USA Waste Services, Inc. and a 1999 accounting scandal which resulted in the company twice revising reported earnings and taking a \$1.8 billion write-off.
5. A \$454.5 million jury verdict in a lawsuit by two individuals against Comp USA, its former CEO, a principal shareholder and two affiliated companies of the

shareholder. The plaintiffs in the lawsuit allegedly entered into an agreement with CompUSA to open CompUSA stores in Mexico. The jury found the defendants improperly breached that agreement and awarded the franchising deal to the principal shareholder defendant. The jury allocated the total damage award 65% to the former CEO, 25% to the principal shareholder, and 10% each to two affiliated companies of the principal shareholder. The court subsequently reversed the verdict against CompUSA and its former CEO, and reduced to \$121 million the judgment against the principal shareholder.

6. A \$410 million settlement in a securities class action against Raytheon Company and its directors and officers. The lawsuit alleged accounting irregularities in connection with the Raytheon Engineering & Constructors division and a failure to take appropriate write-downs on a plane refurbishment program for the U.S. Navy. The settlement calls for payment of \$200 million cash, to be funded partially by insurance, and warrants valued at \$210 million. The company's auditors, PricewaterhouseCoopers, have agreed to pay an additional \$50 million to settle the claims against them.
7. A \$325 million settlement in a securities fraud lawsuit and an ERISA lawsuit against certain directors and officers of Global Crossing and its subsidiaries and Plan fiduciaries. The lawsuits alleged that the defendants improperly accounted for "swap" transactions which eventually led to a massive write-down and Global Crossing's bankruptcy, although Global Crossing never restated its earnings. The D&Os allegedly sold over \$1.5 billion of their personal Global Crossing stock during a three-year class period. Approximately \$250 million of the settlement was funded by D&O and Fiduciary insurance, with the balance coming from Global Crossing's former Chairman (\$55 million) and former law firm (\$20 million).
8. A \$300 million settlement in a securities class action against Bristol-Myers Squibb Co. and its directors and officers. The lawsuit alleged that the defendants made overly optimistic statements about its investment in ImClone Systems, Inc. and the likelihood that ImClone would obtain FDA approval for one of its new drugs. Plaintiffs also alleged that the defendants overstated the company's revenue between 1999 and 2001 by \$2.5 billion by offering incentives to wholesalers.
9. A \$300 million partial settlement of securities class action litigation by Chrysler Corp. shareholders against Chrysler Corp., Daimler Benz and the CEO of Daimler Benz. The consolidated litigation alleged that Daimler Benz' CEO misled investors in connection with the merger of Chrysler and Daimler Benz in 1997 by stating at the time of the merger that it was a "merger of equals," when in fact he always intended to make Chrysler a subsidiary of Daimler Benz. The CEO was allegedly motivated to make the misleading statement in order to enhance the likelihood that Chrysler shareholders and the U.S. Government would support the proposed merger and in order to avoid paying shareholders of Chrysler a premium to acquire Chrysler. Insurers reportedly paid \$220 million of the settlement.

10. A \$300 million settlement in a securities class action against Oxford Health Plans, Inc. and its directors and officers and auditor. The Lawsuit alleged the defendants misrepresented material information about the company's financial condition and operations, primarily as a result of a defective computer system that could not handle the HMO's billing and claims data. The auditor paid \$75 million of the settlement and \$225 million was paid by Oxford and its insurers.
11. A \$259 million settlement in a shareholder class action against 3Com, U.S. Robotics, and various directors and officers of those companies. The lawsuit alleged the defendants misrepresented material facts regarding the companies' financial performance and 3Com's acquisition of U.S. Robotics. The alleged wrongdoing occurred both before and after the acquisition. Two of the lead plaintiffs were institutional investors.
12. A \$230 million settlement in a shareholder derivative lawsuit against directors and officers of Computer Associates, Inc. The lawsuit alleged that the defendants breached their fiduciary duties and unreasonably jeopardized the company's financial condition by awarding to three executives \$500 million in stock options. The settlement followed a ruling by the court that the three executives must return 9.5 million of the 20.25 million shares they received under what the court found to be a misinterpretation of the company's compensation plan.
13. A \$220 million settlement in a securities class action lawsuit against Waste Management, Inc. and its directors and officers and auditor. The lawsuit alleged that the defendants overstated the company's profits over several years, resulting in a restatement of the company's financial statements with a \$1.32 billion adjustment in previously reported profits for the preceding six years. A related shareholder derivative lawsuit was settled for approximately \$23 million in total consideration.
14. At least a \$193 million settlement in a securities class action against Rite Aid Corporation and its directors, officers and outside auditor. The lawsuit alleged that the defendants engaged in various earnings-inflating and expense-deflating accounting practices, which resulted in the company restating its financial statements for three years and removing approximately \$1.5 billion of after-tax earnings from those financial statements. The settlement was funded with \$43.5 million in cash and 20 million shares of common stock, with a guaranteed minimum value of \$149.5 million. Claims against the former chairman, CFO and president of the company, as well as the company's auditor, were not released as part of the settlement and were subsequently pursued by plaintiffs.
15. A \$165 million settlement in a state court breach of fiduciary duty class action against directors of Digex, Inc. The lawsuit alleged that the defendants breached fiduciary duties owing to Digex shareholders by agreeing to merger terms which were inadequate to the shareholders. The settlement was funded entirely with stock in the acquiring company (World Com).

16. A \$162 million settlement in a securities class action lawsuit against Dollar General Corporation and its directors and officers. The lawsuit alleged that the defendants materially misrepresented financial information regarding the company, ultimately resulting in the company restating its financial statements for fiscal 1998, 1999 and 2000. During that time period, the company raised \$200 million in a debt offering and certain individual defendants sold nearly \$300 million in company securities through a registered offering.
17. A \$160 million jury verdict against Cell Tech International, Inc. and two of its officers in a shareholder derivative claim and a direct breach of contract claim by the company's founder, Daryl Kollman. The lawsuit alleged the plaintiff was wrongly fired by the company after a change-in-control, and the defendants breached an agreement to register stock owned by the plaintiff for public sale.
18. A \$145.5 million settlement in securities class action and shareholder derivative litigation against DPL, Inc. and its directors, officers and auditor. The litigation arose out of DPL's investments in numerous Central America ventures, which ultimately resulted in more than \$200 million of investment loss to DPL. Plaintiffs alleged that the defendants failed to properly disclose the existence and speculative nature of the investments, the true value of the investments, and the mismanagement of the company's investment portfolio. The auditor reportedly paid \$5.5 million of the settlement.
19. A \$142 million settlement in a shareholder class action against Informix Corporation, its directors and officers and accounting firm. The lawsuit, which purportedly resulted in the largest securities fraud settlement in the history of Silicon Valley, alleged that the defendants violated the federal securities laws by issuing materially false financial statements for three and one-half years. Those financial statements were eventually restated. Fifty-one million dollars of the settlement was paid in cash and the remaining \$91 million was paid in company stock. The defendant accounting firm paid \$34 million of the \$51 million cash portion of the settlement.
20. A \$139 million settlement in a securities class action lawsuit against Symbol Technologies, Inc. and its directors and officers. The lawsuit alleged that defendants fraudulently misrepresented the company's revenues and profits resulting in artificial inflation of its securities. The terms of the settlement require the company to distribute to the class common stock worth at least \$96.25 million and \$38.75 million in cash. The company's former CEO will personally pay \$4 million cash. The settlement does not resolve related shareholder litigation against Symbol's auditor.
21. A \$123 million settlement in a securities fraud lawsuit against Medical Care of America, its predecessor companies (Corrections Corporation of America and Medical Care International) and their directors and officers. The lawsuit arose out of the company's revised earnings forecasts just two weeks after its merger. The settlement consisted of \$47.5 million in cash and \$75.4 million in common stock.

22. A \$122 million settlement in a securities class action against Mattel, Inc. and its directors and former officers. The lawsuit alleged the defendants misrepresented material information relating to Mattel's acquisition of The Learning Co. Mattel acquired that company for \$3.5 billion in stock and was forced to sell the company one year later for no cash and a portion of any future profits from the company.
23. A \$120 million settlement in a securities class action against Conseco, Inc. and its directors and officers. The lawsuit alleged that the defendants misrepresented the company's financial results for 1999.
24. A \$115.5 million settlement of shareholder class actions against Philip Morris Companies, Inc. and its D&Os. The lawsuits alleged the defendants failed to disclose material information regarding the addictive effects of nicotine in cigarettes and regarding alleged manipulation of the company's sales performance through "channel stuffing" of its products.
25. A \$113.7 million settlement in a securities class action lawsuit against MicroStrategy, Inc. and its directors and officers. The lawsuit alleged that the defendants misrepresented the financial condition and performance of the company, resulting in a restatement of the company's financial statements for three years. As part of the settlement, the company issued notes to the class members for \$80.5 million in cash and a distribution of company stock guaranteed to be worth at least \$16.5 million. Some of the company stock was paid directly by the D&O defendants. The cash portion of the settlement was payable in five years, although the company is required to make interim payments of \$3 million every six months.
26. A \$111 million settlement of shareholder class action and derivative litigation against IKON Office Solutions and its directors and officers. The lawsuits alleged that the defendants artificially inflated the company's stock price by issuing misleading financial reports from 1996 through 1998, during which period the company acquired 220 corporations. The settlement does not resolve related shareholder litigation against IKON's auditor.
27. A \$100 million settlement in a securities class action lawsuit against Honeywell International, Inc. and its directors and officers. The lawsuit alleged that the defendants misrepresented the success of Honeywell's merger with Allied Signal, Inc., thereby artificially inflating the price of Honeywell's securities. The lead plaintiffs were institutional investors. The company's insurers reportedly paid \$85 million of the settlement.
28. A \$92.5 million settlement of federal and state shareholder class actions against The Boeing Company and its directors and officers. The lawsuits alleged that the defendants misrepresented and concealed information about the status of Boeing's commercial airplane production problems and the financial results of those operations. The entire cash settlement was paid by Boeing's D&O insurers.