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Chubb Panel Seeks Legal Changes to Curb M&A Class-Action Suits

By Renée Kiriluk-Hill

LAFAYETTE HILL, Pa. - The average cost of settled merger and acquisition objection claims increased 63% over four years to $4.5 million in 2016, Chubb North American Professional Lines President Scott Meyer said during a company panel discussion.

The U.S. legal system should limit such cases to federal courts and take action to disincentivize low-merit suits, such an setting minimal damage requirements in order to file suit, attorneys on the panel said.

The number and costs of the cases have become "a tax U.S. companies face that foreign companies do not face; it makes us less competitive in the world market," said Gerard Pecht, global head of dispute resolution and litigation at Norton Rose Fulbright US LLP.

Eighty-five percent of public company merger acquisitions were challenged in court last year, according to Bruce Vanyo, head of the securities litigation and enforcement practice at Katten Muchin Rosenman LLP. "They're an abomination, they're like highway robbery … It's embarrassing that our legal system tolerates this," he said.

In settled merger and acquisition objection claims, Meyer cited Chubb data showing 39% of claims paid went to shareholders. The remaining 61% went to attorney fees and expenses with plaintiff attorneys fees nearly double defense attorney costs.

Going forward, the attorneys would like the suits restricted to federal courts, along with reforms to Section 11 of the Securities Act of 1933, which allows shareholder class actions for misstatements in a newly public company's registration statement.

Pecht advocates minimum damage requirements in order to bring a lawsuit, in line with rules in place in some states for class actions.

Barry Kaplan, who heads the Wilson Sonsini Northwest Litigation Group, said a generational shift has new entrants "bidding for some entry in the plaintiffs attorney bar," with smaller firms taking second-tier cases and "making a push to become the most-prolific filers."

There are no consequences for plaintiff attorneys who generate see-what-happens cases, added Daniel Tyukody, co-chairman of the securities class-action practice at Greenberg Traurig LLP.

Tyukody said he doesn't see Congress agreeing to a user-pay provision in cases deemed merit-less, but said it would "eliminate a huge number of cases.

According to Chubb, from 2014 to 2017 the volume of U.S. federal securities class actions more than doubled from 168 to 412, adding to higher settlement and defense costs.

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According to a Best's Special Report on U.S. directors' and officers' liability results last year, the main driver of the worsening claims frequency trend in the line is the increase in federal securities class-action litigation, as filings in 2017 increased year over year by a reported 52% (Best's News Service, April 6, 2018).

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