



Releasing the New 2022 Securities Litigation Report

Join Rachel Fritzier, Partner in litigation at Kirkland & Ellis, and Laura Hopkins, author of the report and Lex Machina's Securities Legal Data Expert. This event will be hosted by Lex Machina's Manager of the Customer Success Team, Joshua Harvey. The panel will analyze federal securities litigation trends over the last three years and offer insights on judges, parties, and law firms. The webcast will include a look at emerging trends in cryptocurrency cases and the evolving impact of COVID-19.

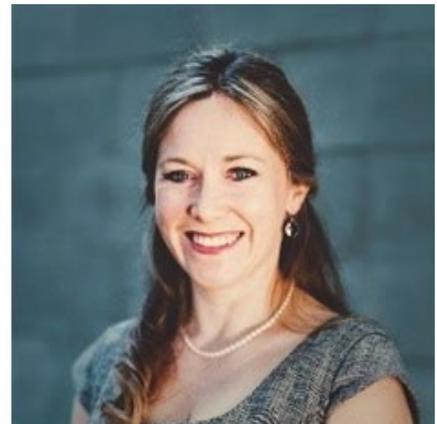
Speakers:



Rachel Fritzier
Partner
Kirkland & Ellis



Joshua Harvey
Manager, Customer Success Team
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Laura Hopkins
Legal Data Expert
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Harvey ([00:00](#)):

Welcome to the 2022 Lex Machina's Securities Litigation Report webcast. My name is Joshua Harvey. I lead the customer success team here at Lex Machina. And just a few housekeeping items before we get started. This webcast is scheduled for about 30 minutes, though we hope to finish a little bit early so that we have enough time to answer some questions. So there's a Q&A box at the bottom of the screen. And if you have any questions for our guests or the webcast, feel free to pop one in there, and we'll try to get them by the end. If you aren't familiar with Lex Machina, we're a legal analytics company. So we provide actionable insights about judges, courts, lawyers, law firms, parties and issues. Simply put, Lex Machina and legal analytics help you win. They help you win in the practice of law and in the business of law. Lex Machina is used by law firms of all sizes, including most of the AM 100, small firms, solo practitioners, corporations, federal government agencies, litigation funders, law schools, and really any type of organization that wants to gain actionable insights from analyzing litigation outcomes.

Joshua Harvey ([01:08](#)):

And before we really dig into the data and dig into this year's report, I just want to take the time to remind everyone that a lot of hard work goes into creating these reports. We have a great team of legal data experts that put a lot of time to working on these reports. But the cool thing about the data is that you could access all these data points from Lex Machina. We're pulling it from Lex Machina when we put that together. And if you want to dig into it, narrow down, expand the data points, if you have Lex Machina, you can do that on your own.

Joshua Harvey ([01:38](#)):

So today I have the pleasure of working with and talking with two very talented and accomplished guests. So first I'd like to introduce Rachel Fritzler. Rachel is a litigation partner at Kirkland & Ellis, and she handles a variety of securities matters in both state and federal court. Welcome Rachel, and thanks for joining us today.

Rachel Fritzler ([01:57](#)):

Thank you for having me.

Joshua Harvey ([01:59](#)):

Thank you. And next I'd like to introduce Laura Hopkins. So Laura is the Lex Machina securities legal data expert. She's also the author of the Securities Litigation Report. And Laura has about 15 years of civil litigation background herself. So let's jump right into the report, Laura. Why don't you tell us a little bit about this year's report. Give us a little bit of what goes into it. We'll start off maybe talking about some of the case filing trends you saw this year.

Laura Hopkins ([02:31](#)):

Yeah. Thanks, Josh. I am happy to present this report. We've been doing this for a few years now, and it's always fun to dig into the data that we have in our software. As a reminder, this report highlights data directly from Lex Machina. Any of our customers can go in and get the same data that they're looking at today.

Laura Hopkins ([02:55](#)):

The securities case filings are our district court case filings in federal court with one or more claims of federal securities violations brought under either the Securities Act, the Exchange Act, or another federal securities law such as the Commodity Exchange Act. There's a few others in our definition. And then in addition to classifying securities cases, Lex Machina also categorizes cases into subcategories through tags, such as shareholder derivative suits, class action lawsuits, and a few others that we'll highlight today and are contained in the report.

Laura Hopkins ([03:33](#)):

I also want to add that this data does not include MDL associated cases, but we have devoted a full section in the report to looking closer at MDLs. So you'll have to check out the full report if you want to see that data. And this first slide here is just overall general securities case filing since 2012. Here we see a pretty steady trend through 2016 when we saw an increase over the years, and then a pretty significant jump, I think in 2021. Rachel, I'll toss it to you. What do you think about this general increase in case filings?

Rachel Fritzler ([04:17](#)):

My initial reaction is that I don't think it's going to stop any time soon. I think this is consistent with where securities litigation overall is heading. I also think 2021 was an interesting year for a lot of reasons. It was actually a record year for IPOs driven in large part through SPACs. And so with that, we see a lot of relatively young companies that may not have necessarily been prepared for the regulatory and private litigant scrutiny that comes with going public.

Rachel Fritzler ([04:51](#)):

And of course there have been some of these IPOs that have very publicly not gone as planned where the performance just didn't really line up with the expectations. We also see a lot of emerging industries like electric vehicles. There's been a lot of litigation surrounding those. I think it's probably a reflection of all of these things.

Laura Hopkins ([05:13](#)):

Nice. Thanks. So for the next slide, Josh, I'll pass it over to you to introduce and discuss.

Joshua Harvey ([05:22](#)):

Sure. So one of the things that I think makes Lex Machina really unique in terms of legal analytics is our ability to use case tags to really dig deeper into the cases that matter the most for you and find deeper insights. And so with our shareholder derivative suit case tag, we're able to actually look at cases and look at trends just dealing with those derivative suitcase filings.

Joshua Harvey ([05:47](#)):

So Rachel, we see here that there's a sharp increase in shareholder derivative suits since 2016, really peaking in 2020, and then it returned back to around the 2019 levels last year. What do you think was driving that increase and then the leveling out at the end?

Rachel Fritzler ([06:05](#)):

So it's interesting because I think the overall trend, I mean, 2021 was still, as you say, much higher than even 2018, 2017, 2016. I think derivative lawsuits, not always, but frequently follow securities litigation. I think there may be a little bit of a trailing time period that we're seeing in the data here. In my experience, I think derivative suits are not going away. I will be very interested to see what this shows in 2022, because my expectation would be that it levels out or even goes up again. This is not going away anytime soon, and it is a continued source of pressure for companies.

Laura Hopkins ([06:54](#)):

Thanks, Rachel. So moving forward to class action securities case filings. Here we see an increase in 2015 that over-doubled in 2017, but then since then it looks like we've tracked back, seeing less securities class actions being filed. Rachel, do you know why we're seeing this decline?

Rachel Fritzler ([07:23](#)):

I can't say for sure. I mean, I think partly what we may be seeing here or not seeing here is that there is also an increase in litigation demands, which come in the form of a letter, and aren't actually filed on the docket. Depending on how things play out, sometimes you decide life is too short, and rather than fighting on a litigation demand, there's a resolution that stops short of any actual filing. And so I think the other thing that's probably represented here is that obviously there was the big jump in 2016 to 2017 that I think we-

Rachel Fritzler ([08:03](#)):

In 2016 to 2017 that I think we all agree is probably reflective of truly a decision and the migration of some of these actions to federal court. But there's increased scrutiny that comes along with being in federal court, right? Doesn't mean that it's going to be a cakewalk. And I think you're probably seeing private litigants recognizing that.

Laura Hopkins ([08:27](#)):

Yeah, I agree. Everybody jumped into federal court class-actions and then backed away. Moving to the next slide. So Lex Machina has been tracking the effects of the COVID-19 pandemic through a dedicated case tag across all case types. A case receives the COVID case tag if number one, the pandemic is the but for cause. So if not for the pandemic, the case would not have been filed. Or two, pandemic related circumstances exacerbated the dispute. So here we're looking only at COVID tagged securities filings, which spiked in the third quarter of 2020, which as we all dreadfully remember is in line with when the lockdowns in the US and Europe began. We saw two main types of COVID cases in securities. I mean, there were others. But the majority were shareholders seeking injunctions related to mergers. And the other type we frequently saw were shareholder reactions to a steep drop in stock prices at the beginning of the lockdown, which probably explains the spike in the shareholder derivative suits in Q3 of 2020 that we saw. Oh, sorry. On the second slide as well. Rachel, what are your thoughts on these numbers?

Rachel Fritzler ([09:51](#)):

Yeah. I think for the whole world who lived through these times, I think it's probably reflective of just the huge uncertainty at the time. And of course, the stock market drop significantly early on in the pandemic I think you had a lot of shareholders concerned about the COVID implications, like you said, related to MNA activity. And so I think this represents a litigant overreaction and expecting a sort of

worst-case scenario. Obviously, as we know, the stock market actually improved over the course of the pandemic. It hasn't been a smooth ride. But things that for most companies and a lot of sectors, things have gone pretty well. And I think this chart reflects that reality.

Laura Hopkins ([10:44](#)):

Yeah. Definitely. Moving forward to cryptocurrency, Lex Machina also has a keyword search function that allows users to search specific documents like pleadings, complaints, answers and many, many other types of documents. And so while we don't have a tag for cryptocurrencies, we use the keyword search function to search for cases mentioning cryptocurrency, blockchain, Bitcoin, Ethereum, or crypto. And we left good old Dogecoin out though. So on this slide, we saw that the increase in cryptocurrency cases is likely consistent with its popularity. There was a spike in 2018 in cases, which is also consistent with a drop in the price of Bitcoin and other in the rest of the crypto market. But here's what I want to know. Rachel, do these cryptocurrency cases belong as securities lawsuits?

Rachel Fritzler ([11:45](#)):

I think the SCC would say yes. They're trying to figure out how to regulate cryptocurrency. But that's still an open question. So one of the interesting things has been there are a fair number of cases that are being filed even by private litigants as failure to register cases, right? Not because it's a public company engaged in cryptocurrency, but because they say they should be registered as crypto. I'm sorry. As securities. My personal view is that I think crypto seems to be here to stay. It's only increasing in popularity. I suspect next year you may update this report to include Dogecoin. I don't know where we'll be by then. But I think as it increases in popularity, the SCC is going to continue to seek ways to regulate crypto and we are going to see more and more cases.

Rachel Fritzler ([12:46](#)):

But I think over time, they're going to start looking more like traditional securities litigation as opposed to what we have now, which are some of these interesting failure to regulate cases. Now what's interesting is there was actually a jury verdict in a Connecticut case that found that four different crypto products were not securities, applying the Howey test. Now, if the regulations change and there is more sort of explicit regulation of crypto, I think that we'll change things than I expect to see and more litigation on this going forward.

Laura Hopkins ([13:24](#)):

All right.

Joshua Harvey ([13:24](#)):

So Rachel, you kind of hinted it at this in your answer there. But I'll put you on the spot and ask you to go maybe a step further. I mean, we're seeing this huge trend go up from 2016 to 2020, '21. Five years from now from looking at the data, do you think it's going to be double that, up at...? Is it going to keep going up or do you think it's going to level out at some point?

Rachel Fritzler ([13:45](#)):

I think it's going to keep going up. But I'm not sure if we'll still be breaking it out on its own slide.

Joshua Harvey ([13:49](#)):

Sure.

Rachel Fritzler ([13:50](#)):

I think it might be sort of folded into class action filings at that point.

Joshua Harvey ([13:55](#)):

For sure. That makes sense.

Laura Hopkins ([13:59](#)):

So moving on. As you know by now, Lex Machina attracts cases by district, judge, law firm, party, and any combination of those traits. So here, we're looking at the federal districts that saw the most securities case filings from 2019 to 2021. We see that the top districts are the Southern District of New York, the District of Delaware and the Northern District of California. Rachel, any surprises here?

Rachel Fritzler ([14:31](#)):

No real surprises. I mean, I think that's certainly consistent with my experience in my practice. And it's also consistent with the large number of filings that relate to financial transactions and IPOs specifically, right? It's very easy to file in the SDNY. And I think it also probably has some relation to the pandemic. I think while litigants were trying to figure out and lawyers were trying to figure out to what extent they were going to need to be in court in person, what extent they want to travel, my guess is that it prompted more and more plaintiffs to file in their home jurisdictions.

Laura Hopkins ([15:17](#)):

Yeah. Yeah. From 560 to 969. I mean, it's almost double, so.

Rachel Fritzler ([15:22](#)):

Right.

Laura Hopkins ([15:22](#)):

Because the stay at home lockdown trend.

Rachel Fritzler ([15:27](#)):

Right.

Laura Hopkins ([15:27](#)):

So Josh, I think everybody's heard from me a lot. Do you want to introduce this next slide?

Joshua Harvey ([15:36](#)):

Yeah. I mean, one of my favorite slides we talk about these reports and get to talk to actual litigators and practitioners is talking about the judges' data. I think the judicial data sometimes can be the most impactful for a practitioner that's using analytics in their kind of day-to-day practice. And in fact, kind of a funny anecdote that I heard recently which was that the ABA Journal posted in 2019 that France...

Joshua Harvey ([16:03](#)):

The ABA journal posted in 2019 that France actually banned and criminalized judicial analytics in their courts because they thought that it was giving people too much of an advantage. I just think it's fascinating that the government would just completely ban analytics. And so obviously just shows the power in the value to be able to see what a judge is doing and how they're responding to certain types of motions. And who's winning more often and things like that. In this particular slide, Rachel, when we look at the most active judges by securities cases filed, we're seeing a lot of Delaware in a lot of Southern districts in New York work, but the Delaware judges have a lot more cases even than the ones in Southern district of New York. What does this tell you? What jumps out at you when you look at this data?

Rachel Fritzler ([16:52](#)):

Well, it tells me that the district of Delaware, they probably appreciate having a little bit more help. There are of course, a lot more judges on the Southern district than in the district of Delaware. And so it would be interesting to see this data sort of per capita adjusted to see what the rate is of these cases. I mean, these names do not surprise me. I have cases currently, or have recently had cases in front of most of the judges on this list. And I think it's really interesting because some of them are really at the forefront of what's happening in securities litigation right now.

Rachel Fritzler ([17:31](#)):

Judge Atkin in the Southern district released a decision just a couple months ago in the Sirion case on the issue of whether the plaintiff council had conferred a benefit on shareholders by causing the company to update their disclosures. And even though the judge found that there was causation and that it was probably because of the lawsuit that the company updated its disclosures, there was no substantial benefit. And so nevertheless plaintiff's council was not entitled to a mutinous fee. So there are a lot of interesting developments and I think the people on this list are right at the forefront.

Joshua Harvey ([18:13](#)):

Very cool. So that also leads us to another question, Rachel, which is how do you use judicial analytics in your practice? How does your firm use analytics when you're looking at a judge?

Rachel Fritzler ([18:28](#)):

Well, in my experience, one of the first questions that clients ask is, tell me about the judge. What do we know about this judge? And obviously again I, and my colleagues have plenty of personal experience in front of the people on this list. And a lot of the judges that are hand doing these big cases, but moving beyond the anecdotal and being able to speak to the broader experience that a judge has is really helpful. And so this kind of data allows us again, to talk about it from a higher level of how many cases have they heard, how many cases proceed beyond a motion to dismiss? Have they ever granted a motion for summary judgment? Have they ever denied class certification? And being able to get the data on that gives us the opportunity to really present a more complete picture to clients as we're the outset of a case.

Laura Hopkins ([19:23](#)):

Thanks. And actually I noticed, sorry. I knew all the sounds weren't turned off. Actually, Judge Stark, I think, is on his way up to the federal circuit. So we're going to meet somewhere probably in that district of Delaware. I noticed actually recently a lot of his cases are being stayed so-

Rachel Fritzler ([19:42](#)):

Or transferred to the magistrates.

Laura Hopkins ([19:43](#)):

Yeah. So let's keep going. So here we have the most active plaintiffs by cases filed in 2019 to 2021. I think nobody is surprised that the SEC would be first, but I was surprised that positions two through four are held by individuals even ahead of the commodity futures trading commission. Rachel, what's going on with all these individual repeat filers?

Rachel Fritzler ([20:15](#)):

I would guess that there is a strong correlation between the repeat individuals and the top plaintiffs firms. I think that this is consistent with sort of our experience. I think there's a section of the plaintiff securities bar that believes strongly in being the first to the field and first to file. And so not surprising that we're seeing a lot of repeat players here.

Laura Hopkins ([20:44](#)):

So we'll look on the other side and on the defense side, I mean, it's mostly banks and financial institutions, and that is expected as the top defendants in securities case filings, I would think. What are your thoughts?

Rachel Fritzler ([20:59](#)):

I think this tracks with some of the other trends that we've been talking about. I think certainly where you have an increase in litigation around IPOs and other offerings, then it's pretty easy to name the financial institutions as a defendant as well. And often these entities may be indemnified through their work on the deal, but they certainly have insurance of their own. So it's an easy way to increase the defense pocketbook.

Laura Hopkins ([21:33](#)):

I see. Josh, do you want to introduce our next slide?

Joshua Harvey ([21:38](#)):

So, Rachel, I mean, you mentioned, we were talking about the plaintiffs a couple minutes ago, that there might be some correlation with the plaintiff's firms. And so when we're looking at this we definitely see some scaling up over the past few years with firms that are going from double digits to triple digits. Does anything jump out at you here when you look at these statistics?

Rachel Fritzler ([22:02](#)):

I think it's interesting to see the scaling up of some of these firms and the scaling down. I think there's definitely been some movement. There's been a lot of movement in the legal industry that on both sides of the V, but none of these names surprise me. And I think it's consistent with what we've been seeing.

Laura Hopkins ([22:23](#)):

Okay. So now we are at our last data driven slide, which is most active law firms representing defendants. And here we see our esteemed panelists from Kirkland & Ellis is listed as one of our top securities firms. Rachel, tell me a little bit about this slide.

Rachel Fritzler ([22:50](#)):

Yeah. I mean, again, I don't know that there are really any surprises here. What's interesting to me, what has been interesting in the past few years in my practice is that I've seen an evolution from frequently, you would get calls from clients who had really strong arguments on motions to dismiss, and they're not quick necessarily, and you never know how, they're no guarantees. You never know how long it's going to take a judge to rule, but frequently you could get a complaint kicked out on a motion to dismiss.

Rachel Fritzler ([23:22](#)):

More and more in my practice, at least, I'm seeing clients who realize they may not have the strongest motion to dismiss arguments or realize for whatever reason they may be litigating for the longer haul. And in those instances what we see as our role is really to help prepare that strategy from the beginning, the defense strategy, that goes beyond a motion to dismiss. The things about, okay, are there ways that we can oppose class certification? Are there arguments to be made? Do we have good summary judgment arguments? And are there ways that we can you aggressively defend and also pursue offensive discovery for-

Rachel Fritzler ([24:03](#)):

... defend and also pursue offensive discovery, for example, deposing confidential witnesses that are frequently listed in these complaints and really taking the offensive in some ways and developing a strong defense strategy that will adjust the leverage. And sometimes, we've had success with one motion for summary judgment in securities cases. So it's interesting, there may be fewer of them, but I find they take a lot more time up on my plate.

Laura Hopkins ([24:31](#)):

Sure. So that's all for my part of the program. Rachel Fritzler, thank you so much for joining us. And Josh, I will hand it back over to you for some questions.

Joshua Harvey ([24:45](#)):

All right. Sure. Thank you. Well, we've got about five minutes, so we definitely have some time to answer some questions and we actually just got a pretty cool one that I think Rachel, you're definitely going to be the one who's best suited to answer. And it is, "Do you see the expansion of crypto related products broadening to a level where state and local agencies become more involved in its regulation and enforcement, as opposed to just the federal government?"

Rachel Fritzler ([25:09](#)):

It is a great question. And I think the answer is yes. Actually in the last couple of years here in New York, there was a suit against the Department of Financial Services, that all hinged on whether the Department of Financial Services had the regulatory authority to regulate crypto. And ultimately the court decided yes, the statutory authority does extend. And so that's certainly something that I know the New York Attorney General's Office is focused on, and there are other in the Department of Financial Services certainly focused on. And I think we're going to see this more and more.

Rachel Fritzler ([25:49](#)):

I mean, at the same time, we're obviously seeing certain jurisdictions who are aggressively and very publicly taking pro crypto stances. I think Miami has become sort of this new mini... They're trying to

build themselves as the new mini Silicon Valley for crypto. So yes, I think we are going to see a variety of state and local responses, which it's going to be interesting because obviously I'm guessing there will be some differences in those approaches.

Joshua Harvey ([26:21](#)):

Yeah. That's fascinating. And I really appreciate the kind of behind the scenes insight on that. So Rachel, another question we had for you was, I'm sorry, what trends are you kind of really focusing on right now when you're looking out over the next couple years? What trends are you focusing on that might kind of guide litigation and your practice moving forward?

Rachel Fritzler ([26:48](#)):

I think we're seeing an increase in the SPAC litigation. Again, this has been one of those interesting situations where it was at first an anomaly, it was a new trend in litigation, but now I think that's starting to look more and more like traditional securities litigation. We typically see Section 14 and Section 10 (b) claims there. Again, they tend to hinge on more traditional fact patterns where there's some information or some post-closing event that allegedly causes the stock to drop. And so in a lot of ways, they are similar to the cases that we see in other contexts. But I think we're definitely going to continue seeing more and we've got plenty on our plate here.

Joshua Harvey ([27:40](#)):

For sure. And it's interesting for you to mention the SPACs because that's actually a question we get a lot with our CSMs and through our support group, is questions about finding more insights in SPAC litigation in Lex Machina. So I'm not surprised that you're seeing those trends when we're seeing those questions as well. So I think we've got time for one last one. And I'll finish with you mentioned a couple minutes ago some of the thought and the work that goes into how and when to file a motion to dismiss or motion for summary judgment, and the likelihood of winning or losing those. And one of the cool insights in Lex Machina is our motion metrics report, which allows you to see granted [\[aisle 00:28:26\]](#) rates of a judge in motions to dismiss, motion for summary judgment. Are those insights helpful for you in practice when you're trying to decide or advise a client when to file certain types of motions?

Rachel Fritzler ([28:39](#)):

They definitely are. They are part of the mix of information as we think through what our strategy is. And frequently, I think too often, securities defense council look at class cert, for example, as something that's just going to get rubber stamped by a judge and is an easy burden for the plaintiffs to meet, and so hardly warrants much time or attention. But in my experience, there are cases where you can come up with pretty interesting and important arguments to contest class certification and knowing the extent to which the judge has experience, and in fact engages carefully with the standard and will carefully interrogate whether that burden has been met, is really helpful in deciding how to approach that stage of the case. And it's also helpful to know their approach to summary judgment, the time that it takes to get to decision, all of those things are helpful to advise clients who are facing a lot of uncertainty, obviously.

Joshua Harvey ([29:47](#)):

Wow, I really appreciate your insights, Rachel. Unfortunately, we're at the 30 minute mark. I can't believe it's been 30 minutes already, but it's been a great conversation. And I just want to thank you both for being with us here today and talking to us and sharing your insights and what you're seeing. I

also want to thank our team of data experts that put the work into creating this report. The Securities Report is always one of our most popular, and we get a ton of requests for it. So a lot of work goes into it, and I appreciate everyone that has helped out.

Joshua Harvey ([30:17](#)):

So the next question is how can you get the report? So you can go to www.lexmachina.com, and you'll see a link right there on the homepage that you can request it. And if you currently subscribe to our securities module, you can just click on it and we'll send it to you. We also will send it to people that aren't current subscribers, but we do have one ask, and that's just that you spend a few minutes with one of our legal analytics experts, and they can kind of walk you through your cases and you can see securities analytics through the lens of your own practice. But we're happy to share with anyone.

Joshua Harvey ([30:53](#)):

So, Rachel, thanks so much for joining us today. It's been great talking to you. Laura, thank you for talking to us and thank you for the work that you put into the report. We really appreciate it. And to everyone on the call, thanks so much for joining us. It's always a lot of fun to do these webcasts. And if you want to learn more about Lex Machina, you can go to the website, let us know. We're here to help you show how legal analytics can help you win business and win cases. So, thanks so much everyone. Have a great day.

Rachel Fritzler ([31:20](#)):

Thank you.