

**Who are the Top Law Firms?
Assessing the Value of Plaintiffs' Law Firms in Merger Litigation**

C.N.V. KRISHNAN

STEVEN DAVIDOFF SOLOMON

RANDALL S. THOMAS**

Abstract

Using a hand-collected sample of 1,739 class actions that challenge the fairness of M&A transactions from the period 2003 through 2012, we examine the effectiveness of plaintiffs' law firms. From out of the 336 law firms in our sample, we determine the top law firms based on their popularity with informed plaintiffs as well as their proven ability to obtain large attorneys' fees awards. We find that the presence of a top plaintiffs' law firm is significantly and positively associated with a higher probability of lawsuit success. These results hold even after instrumenting for unobserved case quality, given that top law firms likely can obtain better cases with higher chances of success. This success appears to stem from the fact that top plaintiffs' law firms are significantly more active in prosecuting cases than other plaintiffs' law firms: they file more documents in the cases they litigate and they are more likely to bring injunction motions to enjoin a transaction. Defendants are also less likely to file a motion to dismiss cases filed by top plaintiffs' law firms. Our results inform the debate over shareholder litigation as well as provide courts guidance for selecting lead counsel in shareholder class action litigation.

** Please address correspondence to CNV Krishnan at cnk2@case.edu. CNV Krishnan is at Weatherhead School of Management, Case Western Reserve University; Steven Davidoff Solomon is at the University of California Berkeley, School of Law; and Randall S. Thomas is the John S. Beasley II Professor of Law and Business at Vanderbilt University Law School. The authors thank the editor, Max Schanzenbach, two anonymous reviewers, the participants in the University of California at Berkeley School of Law Faculty Workshop, the members of the University of San Diego Law School's Innovation and Financial Regulation Seminar, The Law and Business Workshop at Vanderbilt Law School, Chief Justice Leo E. Strine, Jr. of the Delaware Supreme Court, Professors Robert P. Bartlett, III, Paul Edelman and Jonathan Karpoff and several plaintiffs' lawyers for their comments and suggestions. The authors also thank John Dotson, Scott Prince, Mary Prince and the Vanderbilt Law School librarians for their research assistance.

1. Introduction

In the popular press, plaintiffs' law firms which specialize in bringing shareholder class actions challenging the terms of M&A deals are often vilified as "leeches", or more soberly, as economic rent-seekers who take advantage of the litigation system (Eissman, 2014). One prominent, negative view of these firms is that they "file early, then free ride," referring to the popular perception and academic theory that these firms are out to settle cases and not litigate (Weiss & White, 2004). These plaintiffs' law firms can reap settlements because of the well-known costs and uncertainty related to corporate litigation which can push corporations to rationally settle cases rather than litigate vexatious claims. If this is correct, we would expect that plaintiffs' law firms would engage in little actual litigation of the merits of M&A class actions but rather would simply file complaints and seek to quickly negotiate settlements.

But is this view correct? In this paper, we examine the effectiveness of plaintiffs' law firms to see if there are differences among firms in how they litigate cases and whether they are successful in obtaining relief for shareholders. We do so by focusing on the measureable actions of plaintiffs' law firms in litigation arising out of a M&A transaction, or what we will call merger litigation. Today, merger litigation has become ubiquitous with 97.5 percent of larger transactions in 2013 being targeted by a lawsuit (Cain & Davidoff Solomon, 2015). The rise in merger litigation has led to increased criticism by judges, practitioners and academics that plaintiffs' law firms are seeking to take advantage of the litigation system by settling cases cheaply rather than bringing and pursuing strong claims (Thomas & Thompson, 2012).

We analyze the role of plaintiffs' law firms in merger litigation using a hand-collected sample of 1,739 different merger lawsuits during the period 2003 through 2012. We use our dataset to examine three related questions concerning the performance of plaintiffs' law firms. First, we investigate who the most reputable law firms are, as determined by the number of transactions in which they are lead or co-lead counsel for non-individual named plaintiffs in which a court awarded at least \$1 million per deal in attorneys' fees in the recent past. We select these criteria because non-individual plaintiffs are likely more informed and more discerning in their selection of lead counsels, large attorneys' fee awards reveal lawsuit quality and our tests confirm that these criteria are appropriate. Using these criteria over the most recent past 3 years, we determine the top-5 law firm league tables (the "top" firms) for each year.

Overall, we find that the barriers to entry in merger litigation are low with as many as 336 law firms listed as plaintiffs' counsel in at least one suit during the period of our sample. However, the top 5 firms, on average, have anywhere between around 5% and 10% each of total market-share every sample year.

Law firms classified in the top 5 on average behave differently than other law firms. We find that these top firms tend to pursue transactions that exhibit indicia of greater potential conflicts of interest, such as management buy-outs or going private transactions, as well as larger deals. This is an indicator that these firms may be pursuing suits with better outcome potential. There is also some evidence that, consistent with the findings of Cain & Davidoff Solomon (2015), the top 5 firms may be attempting to game the system by selecting among, and filing in, more favorable litigation forums in an effort to obtain higher attorneys' fees.

The second question we ask is whether the plaintiffs' law firms in the annual top-5 league tables obtain better results than other firms. The dominant strategy for a plaintiffs' law firm may be an entrepreneurial one: to file a large number of cases and settle quickly for a cheap payoff (Coffee, 1985). Conversely, top firms may be willing to more vigorously litigate cases due to their greater resources, their desire to create or preserve reputational capital and their better ability to select strong cases. In our analysis, we find that top plaintiffs' law firms do engage in more vigorous litigation and produce statistically significantly superior results. We find that the top law firms have fewer cases dismissed, win more procedural motions, and obtain more higher-valued settlements than other law firms.

That top law firms would achieve superior results may not be surprising, but our results are robust even after instrumenting for unobserved case quality, given that top firms should, because of their greater reputation, be able to pick superior cases and so obtain better results. Adjusting for this bias, we still find that top law firms obtain more settlements, and more higher-valued settlements, defined as settlements with significant dollar consideration or settlements amending the terms of the merger agreement.

The final question we analyze is how do top plaintiffs' law firms produce these superior results? Strong results can be accomplished a variety of ways, including by litigating more actively, picking better cases, filing more cases, or being less willing to settle cases. Alternatively, it may be that these plaintiffs' law firms rely on their reputations among judges to obtain better

judicial treatment, a less than optimal driver of litigation outcomes. This might be the case if these firms were engaging in forum shopping to get favorable judges to hear their cases.

We find that the top 5 plaintiffs' law firms more actively litigate their cases than other law firms, filing more documents with the court as shown by the number of entries on the case docket sheets and bringing significantly more motions for an injunction to stop transactions. These top firms are also less likely to have their cases dismissed and appear to be more careful in terms of screening lawsuit quality, so that significantly fewer dismissal motions are filed by defense counsel in their cases as compared to cases filed by other top law firms.

Our results provide a more textured view of the value of plaintiffs' lawyers in shareholder litigation: while some firms may specialize in filing many cases, then settling them cheaply, other plaintiffs' law firms are more aggressive litigators in their quest to obtain more favorable results for their clients. For the topmost firms, we show that they succeed by adopting more aggressive litigation strategies. Our findings are grist for pursuing any reform effort of shareholder litigation generally, such as judicial involvement in the appointment of lead plaintiffs' counsel in shareholder class action litigation. We find evidence that such reform should be steered towards encouraging courts to select the firms who more actively litigate to play a lead role in such litigation. In other words, contrary to conventional wisdom and theory, not all plaintiffs' law firms are alike and lawmakers, judges and regulators should act accordingly.

2. Literature Review and Theoretical Development

A number of papers examine class action corporate litigation and the role of plaintiffs' law firms. Coffee (1986) argues that plaintiffs' attorneys are utility-maximizing entrepreneurs. These attorneys manage a portfolio of cases with the expectation that only some cases will be successful. Coffee concludes that these actions "are uniquely vulnerable to collusive settlements that benefit plaintiffs' attorneys rather than their clients." Thompson and Thomas (2004) collect corporate litigation cases filed in the Delaware Chancery Court in 1999 and 2000 and find that merger litigation dominates all other forms. They find several indicators that these suits have high levels of litigation agency costs, but also find a large number of beneficial settlements for shareholders. They interpret their findings to show that merger litigation was at that time performing a role reducing managerial agency costs. Weiss and White (2004) also undertake an

analysis of plaintiffs' attorneys and corporate litigation for a smaller set of class action filings involving mergers in Delaware from 1999-2001. These authors argue that shareholder litigation mostly benefits plaintiffs' attorneys as opposed to shareholders because they believe that law firms file opportunistic complaints in pursuit of quick settlements in exchange for receiving payments of attorneys' fees.

These papers focus on the agency problem in class action litigation, namely that plaintiffs' law firms are bringing suits on behalf of shareholders and not themselves. This provides plaintiffs' law firms the chance to act opportunistically to benefit themselves through early and insufficient settlements rather than acting for the benefit of shareholders (Perino 2012). The plaintiffs' law firm has been theorized to act in this manner when the expected benefit of settling for attorneys' fees is lower than the cost of continuing to litigate, taking into account the uncertainty of litigation (Coffee, 1986). Additionally, Macey and Miller (1991) and Griffith and Lahav (2012) theorize that cheap settlements and attorneys' fees may be traded by plaintiffs' law firms in exchange for releases to the defendants and their willingness to not oppose the award of plaintiffs' attorneys' fees.¹

In order to address this agency problem, judicial review of settlements has been utilized. However, this may fail to catch weak settlements due to information asymmetries and shareholders' inability to effectively monitor plaintiffs' law firms (Weiss and Beckerman, 1995). Perino (2006) finds that, in class actions, generally, plaintiffs' attorneys' fee awards are lower when market mechanisms are used to set fees, or when there is a monitor in the form of a sufficiently interested shareholder plaintiff. In terms of law firms themselves, one solution adopted by the Private Securities Litigation Reform Act (PSLRA) is to have shareholders with significant financial stakes as named plaintiffs because they will be more incentivized to monitor attorney conduct (Weiss & Beckerman, 1995; Fisch, 1997). Cox, Thomas & Bai (2008) find that post-PSLRA the merits matter in terms of lawsuits outcomes and that the presence of institutional shareholders as lead plaintiffs results in better outcomes. Relatedly, Perino (2012) finds that institutional shareholders in the form of pension funds are more likely to monitor class actions outcomes and attorneys' fees. Alternatively, law firms with more capital and willingness

¹ Interestingly, other than Macey and Miller's 1991 article, little attention has been focused on the agency costs associated with defendants' law firms in shareholder litigation. This deficiency almost certainly stems from the lack of disclosure about the attorneys' fees paid to defense side firms, which suggests that courts and legislatures should consider mandating disclosure of these fees.

to create or preserve reputation may be more willing to prosecute cases and less economically incentivized to settle due to higher litigation costs (Coffee, 1985). In this scenario, plaintiffs' law firms which more actively litigate cases have a greater incentive to create value for shareholders.

Turning to M&A transactions litigation, there is little literature about the efforts of plaintiffs' law firms in shareholder litigation, or more specifically what these law firms do to be effective. However, a few studies examine the economic effects of such litigation. Thompson and Thomas (2004) examine a sample of merger litigation brought in Delaware in 1999-2000. The authors find that attorneys' fees are lower and monetary awards are higher in merger litigation than in other types of corporate litigation. Krishnan, et al. (2012) study a sample of merger litigation during the same time period as in Thompson and Thomas (2004), and find that the presence of merger litigation has the economic effect of decreasing deal completion probability by 5.8%, but increasing takeover premiums by approximately 9%. Similarly, Rosenzweig (1986) examines a sample of failed hostile takeover offers between 1982 and 1985. He finds evidence that litigation brought in these offers adversely affects the outcome of a number of hostile bids. There is some evidence that the quality of merger litigation cases has declined over the past thirty years. (Thomas, 2013).

3. Data Collection

Our sample contains all of the transactions listed in the FactSet MergerMetrics database and announced from Jan 1, 2003 through December 31, 2012 that meet the following criteria: a) the target is a U.S. firm publicly traded on NYSE, AMEX or NASDAQ stock exchanges, b) the transaction size is at least \$100 million, so that we focus on large and economically significant transactions, c) the offer price is at least \$5 per share, d) a merger agreement is signed and publicly disclosed through a filing with the Securities and Exchange Commission (SEC), and e) the transaction has been completed as of the end of 2012.

We review, by hand, merger proxy statements and tender offer documents filed with the SEC to determine if litigation is brought challenging the transaction. We exclude all transactions without litigation to arrive at a sample of 730 unique M&A deals. Again we find that litigation is almost in every transaction consistent with Cain & Davidoff Solomon (2015). Because of this almost all mergers result in litigation, and there is no case selection.

We then document all class action cases brought in connection with each deal in the following states: California, Delaware, Florida, New York and Texas.² We focus on these five states because they comprise 64.66% of the transactions in our sample, or 472 unique M&A deals, and these are the top five states for M&A litigation in our sample. No other state accounts for more than 2% of the litigation cases in our full sample. In addition, these top five states comprise 76.85% of jurisdictions of incorporation for the target companies in our sample. These states also have more accessible dockets compared to other states which in many cases require that people go directly in-person to the courthouse to obtain the documents we compile. However, even with these five states, we are still required to hire costly document retrieval services to collect needed documents from courts in many instances.

For each deal we compile the number of suits brought in each of these jurisdictions. We note from court filings whether multiple cases are consolidated into one single case or are maintained as a single case. For litigation outcomes, plaintiffs' attorneys, attorneys' fees, named plaintiffs' identities, and settlement terms, we review public filings and obtain the relevant court filings. Court filings are obtained directly from the court, from public filings on the Lexis/Nexis File and Serve Database, or from Bloomberg Law, and are reviewed by hand. We collect by hand, detailed information on lead law firms from the 2005, 2007, 2009 and 2010 print editions of Martindale-Hubbell, and link them to litigation data in such a way as to be free of look-ahead bias.

From MergerMetrics, we obtain data on the transaction value, offer price, consideration offered, form of acquisition (tender offer/merger), competing bids, target industry, and offer price. We also obtain from MergerMetrics transaction terms, including the presence or absence of a go-shop, the type of transaction (management buy-out, going private deal, etc.), sale process, and state of incorporation of targets. Finally, we use Thomson Financial's SDC Mergers and Acquisitions database to get information on termination fees, toeholds, and target takeover premium. We finally end up with our final sample of 1,739 M&A lawsuits in 472 unique M&A deals spanning the 10-year period Jan 1, 2003 through Dec 31, 2012, after applying screens that ensure all variables required for analysis are available.

Our research agenda in this paper is focused on testing conventional wisdom and theory about plaintiffs' law firms: Is there a difference among plaintiffs' law firms in terms of

² We also code in law firms who file lawsuits in other states if they participate in a settlement or the litigation in one of these five states with respect to the same deal.

experience and ability of act in a lawsuit to obtain the best outcomes for shareholders? If so, the success rate in shareholder class action litigation may be improved by courts selecting the best performing law firms rather than relying solely on the identity or shareholdings of the named plaintiff as the PSLRA does.

4. Descriptive Statistics

Table 1 reports the broad descriptive statistics. The number of unique M&A deals for these 1,739 plaintiff lawsuits is 472, and there are, on average, 3.68 lawsuits filed per deal. The distribution of attorneys' fees awarded is skewed, with the mean of \$1.4 million but a median of just over half million dollars, implying that a few highly successful lawsuits result in very large fees. Indeed, the amount of attorneys' fees awarded in a case is a measure of law firm success, and we will use it to construct our law firm reputation measure.

Table 2 shows descriptive statistics year-by-year of our final sample of M&A lawsuits spanning the 10-year period Jan 1, 2003 through Dec 31, 2012. Some interesting trends can be observed. Multi-state filing of lawsuits shows an increasing trend from 2005, as does filing in Delaware from 2009. The lawsuit dismissal rate shows a decline in the early years of the sample period, followed by an increasing trend in more recent years, although overall there has been little change. Similarly, median attorneys' fees show an increasing trend through 2008, followed by a decreasing trend thereafter, but with little net change during the sample period. These findings are consistent with those of Cain & Davidoff Solomon (2015) who find increasing rates of multi-state litigation and varying responses of the judiciary in terms of adjusting dismissal rates and attorneys' fees to attract litigation as shareholder class action litigation flows in and out of states. These results also show that in recent years Delaware may be gaining market share for corporate litigation, contrary to earlier findings (Armour, Black & Cheffins, 2012).

5. Top Plaintiff Law Firms and Shareholder Litigation

5.1 Who are the Top Plaintiffs' Law Firms?

Since we want to focus on legal advisory services and their associated effects based on law firm reputation, we adopt a classification scheme that distinguishes top firms from others. We determine the most reputable law firm based on fees commanded from informed clients in rolling windows of 3 years prior to the offer announcement, to avoid look-ahead bias. Being

appointed Lead or Co-lead counsel by a court is an indicator that not only is that firm in charge of the litigation, but that the court has likely selected that firm for reputational and other meritorious reasons.³ Non-individual Named Plaintiffs, as more informed clients, presumably, provide additional screening of lawsuit quality, and the \$1 million in attorneys' fees, a measure of lawsuit quality because courts award higher attorneys' fees for better service to the class.

In an approach consistent with annual league-table ranks of financial advisors (investment banks) and legal advisors (law firms) used in the prior literature (see, e.g., Rau, 2000, Krishnan, et al. 2012, and Krishnan and Masulis, 2013), our annual league table rankings are based on the total number of M&A offers that a law firm is associated with as lead or co-lead (with non-individual named plaintiffs and where the firm was awarded attorneys' fees over \$1 million) scaled by the number of the value of all M&A offers occurring in the same period. As is the convention in this literature, each advisor is given full credit for each offer in which it provides advisory services (Rau, 2000 and Bao and Edmans, 2011). For a law firm that is in the top 5 in such league table in a year, the indicator variable, *Top Law Firm*, takes the value of one, and zero otherwise. Thus, *Top Law Firm* identifies the topmost firms to see whether they are more successful than the other top lead law firms.⁴

Table 3 reports the number of appearances in top-5 league tables from 2006 through 2012 and the average market share by number of deals. The top 5 names, on average, are Robbins Geller Rudman & Dowd, Grant & Eisenhofer, Bernstein Litowitz Berger & Grossmann, Milberg, and Kessler Topaz Meltzer & Check. Of course, the names could change when we examine the top 5 league table year by year.

³ In shareholder litigation brought in state court, unlike in federal securities litigation brought in federal court, law firms often negotiate amongst themselves over the lead counsel role. When they disagree, and need judicial intervention to resolve the issue, judges have significantly more discretion when appointing lead and co-lead counsel. In Delaware, the most important state for corporate litigation, the appointment of lead counsel is based in part on the following factors: "(1) The quality of the pleading that appears best able to represent the interests of the shareholder class and derivative plaintiffs; (2) Weight to the shareholder plaintiff that has the greatest economic stake in the outcome of the lawsuit; and (3) Weight to whether a particular litigant has prosecuted its lawsuit with greater energy, enthusiasm or vigor than have other similarly situated litigants." *Dutiel v. Tween Brands, Inc.*, No. 4743-CC (Del. Ch. Oct. 2, 2009) citing *TCW Tech. Ltd. P'ship v. Intermedia Comm's, Inc.*, 2000 WL 1654504 at *4 (Del. Ch. Oct. 17, 2000). While these factors give substantial discretion to Delaware judges, they do encompass reputational metrics.

⁴ In untabulated results, we examine 2 alternative law firm reputation measures – lead or co-lead in lawsuits, and Lead or co-lead for non-individual named plaintiffs. We find that neither of these 2 alternative reputation measures explains lawsuit success as significantly as our *Top Law Firm* reputation measure.

5.2 What Deals Are Top Plaintiffs' Law Firms Associated With?

We examine several deal features in order to assess the quality of lawsuits filed by top law firms. These include the transaction value of the deal; whether the bidder and target are in the same industry; the target takeover premium based on the price per share paid by a bidder for a public target firm's shares relative to the target's pre offer-announcement stock price 1 week prior to the announcement date; whether the M&A bid is hostile or unsolicited; whether the deal incorporates target termination fees; whether the deal is a 100% cash one; whether it is a tender offer or a management buyout (MBO); whether the bidder has at least 5% stake in the target shareholding at the time of the bid (toehold); whether it is going private transaction, where a *Schedule 13E-3* has been filed with the SEC for the transaction due to the buyer being an affiliated party; whether a go shop provision exists, where the merger agreement includes a provision that allows the target company to actively solicit other potential bidders for a specific limited period of time after the merger agreement has been signed; whether there is a private equity participant, where one or more private equity firm is part of the purchasing group for the target firm; whether the target firm was sold in a transaction that was initiated via an auction process; whether the target firm is in a regulated industry, where communications, utilities, banks and financial companies are defined as highly regulated industries; and whether a lawsuit is filed in more than one state.

We include these control variables in our analysis based on the results found in prior literature, to link law firm reputation with indicators of case quality, and to tease out the associations of top law firms with lawsuit outcomes after controlling for case quality. Economic deal complexity can be positively correlated with the size of the transaction (Servaes and Zenner, 1996). Larger deals are also economically more important deals involving larger firms, often reflecting a bidder management's empire building motives. Prior research documents that intra-industry mergers are an increasing proportion of all M&A transactions (Andrade, Mitchell and Stafford, 2001) perhaps due to their less severe information asymmetry problems and more reliable realization of synergies. Hostile bids tend to be more difficult to complete than friendly bids. Cash deals are more complex from a legal point of view. Since the establishment of "Revlon duties" by Delaware courts in the mid-1980s, directors of target companies considering a cash offer (and some stock offers where the deal would produce a controlling shareholder in the

combined entity) have the responsibility to obtain the highest price reasonably available in the short-term (Coates and Subramanian, 2000). Bates and Lemmon (2003) and Officer (2003) report that target-payable termination fee provisions are associated with higher deal completion rates as well as higher takeover premiums. Coates and Subramanian (2000) argue that such lockup provisions change deal completion rates. Tender offers can trigger special bidder obligations and potential liability under the Williams Act (Davidoff, 2007; Klein and Coffee, 2007). Going private and private equity transactions attract additional merger litigation because of the target management's apparent conflicts of interest in consummating these transactions (Thompson and Thomas 2004). Auctions of companies and mergers where the target agrees to include a go shop provision in the parties' agreement will trigger the stricter Revlon doctrine in the Delaware courts and are more likely to attract litigation (Thompson and Thomas 2004). Finally, bidders with toeholds can have a greater ability to obtain favorable deal outcomes including substantial control benefits (Officer, 2003), but toeholds are also viewed as aggressive bidder actions that tend to antagonize entrenched target managers and make successful deal completions more difficult (Betton and Eckbo, 2000). Finally, M&A regulatory/execution risk can be higher when there is a stricter regulatory environment (Agrawal and Knoeber, 1996).

We use the data from 2003-2005 to construct the initial law firm reputation measures for 2006, so our analysis is over the period 2006-2012. Table 4 compares the associations between top law firms and non-top law firms, and various M&A deal/suit features. We find that top law firms tend to be associated with a significantly higher proportion of deals with contentious features: management buyouts and going private deals.

Examining the pairwise Pearson correlation coefficients, we find that MBO and going private deals often tend to be highly correlated. This is not surprising as both types of transactions are forms of leveraged buyouts. Furthermore suits with actual filing in multiple states and in Delaware tend to highly correlated. Hence, in multivariate regression analysis, we use a going-private indicator (not both MBO and going-private indicators) and only the Delaware court filing indicator (and not multiple state filing indicator) to avoid multicollinearity. We examine the association of top law firms and case quality in Table 5. This table reports coefficients of logit regressions explaining the associations of top law firms with deal/suit characteristics. The regression specification used is:

$$(1) \text{ Top Law firm} = \beta_Y + \beta_I + \beta_1 \times \text{Ln Offer Size} + \beta_2 \times \text{Industry Relatedness} + \\ \beta_3 \times \text{Hostile} + \beta_4 \times \text{Target termination fees} + \beta_5 \times \text{Cash} + \beta_6 \times \text{Tender} + \\ \beta_7 \times \text{Toehold} + \beta_8 \times \text{Going Private} + \beta_9 \times \text{Go shop} + \\ \beta_{10} \times \text{Private equity participant} + \beta_{11} \times \text{Auction} + \\ \beta_{12} \times \text{Target Regulated Industry} + \beta_{13} \times \text{Delaware filing} + \varepsilon,$$

where β_Y is a vector of 7 year fixed effects, and β_I is a vector of 10 bidder industry fixed effects, based on Fama-French industry sectors. Both vectors of fixed effects are used to capture any year- or industry-related common effects not specifically captured by the other explanatory variables. The explanatory variables and residuals from the above panel regression specification (1) can be correlated within law firms. To correct for such law-firm-specific correlations, we report z-statistics that are based on heteroskedasticity-consistent standard errors adjusted for law-firm clustering in all the regressions (see Petersen, 2009).

Table 5 shows that top plaintiffs' law firms are significantly more associated with bigger deals, and with same industry acquisition bids than other law firms, as larger deals are economically more meaningful and same industry mergers often raise antitrust and other regulatory issues. Consistent with the univariate results, top law firms are also significantly involved in deals that entail going private deals that can raise greater fiduciary duty issues. Top law firms tend to significantly less associated with hostile bids.

5.3 What do Top Plaintiffs' Law Firms Achieve?

We examine the associations between top law firms and a number of lawsuit outcomes. Consideration settlements provide increases in the deal price and are therefore the best outcome for the plaintiff shareholders. Amendment settlements and disclosure settlements result in some changes to deal protections and/or increased disclosure to the shareholders, but no increase in the deal price, so they are weaker outcomes for the plaintiff. In particular, disclosure settlements have been criticized for awarding attorneys' fees with little real benefit to shareholders (Fisch, Griffith & Davidoff Solomon, 2014).

Injunction motions that are granted generally create value for shareholders and show a strong litigation effort by the plaintiffs' counsel. If the plaintiffs' counsel is successful in having a motion to expedite granted that constitutes a positive, intermediate step in the litigation which shows effort by the plaintiffs' counsel in the case, and an early assessment by the judge of the

merits of the case, but it is not a final outcome. In general, if the plaintiff files motions and they are granted, then that is a good signal about the merits of the case. However, if the defendants are filing motions successfully, then that frequently leads to an end of the lawsuit. For example, the granting of a motion to dismiss, or of the defendants' motion for summary judgment, are bad outcomes for plaintiffs as they result in the end of the case with no recovery. Plaintiffs also sometimes voluntarily dismiss an action which results in no recovery for the shareholders. This is likely to occur when the plaintiffs' law firm determines after filing an action, that the case lacks merit.

Table 6 shows the associations between the top law firms, non-top law firms, and *Least Active Firms*, defined as law firms that were Lead or co-lead in only 1 lawsuit in rolling windows of past 3 years) and law suit outcomes, over the period 2006-2012. We find that top law firms are significantly associated with a higher probability of obtaining *Higher Valued Settlements* - Consideration settlement or Amendment Settlement, the best outcome for plaintiffs, as compared to other law firms and certainly compared to the least active law firms. Top law firms are significantly associated with a lower probability of lawsuit dismissals, as compared to other law firms. The probability that a court will grant a motion to expedite is significantly higher when a top lead law firm is involved than when other law firms are involved (at 10% significance level), and when the least active law firms are involved (at 1% significance level).

Our findings thus support the conclusion that top lead law firms get superior lawsuit outcomes for their clients, and prosecute cases more successfully, as compared to other law firms. However, do these associations continue to hold after controlling for offer characteristics and fixed effects? To address this question, we examine the associations between top law firms and lawsuit outcomes in a multivariate setting. However, even if we control for offer characteristics and fixed effects, it is still possible that top law firms are associated with specific lawsuit outcomes simply because they are associated with certain types of deals, in which these lawsuit outcomes are more likely. In other words, associations between top law firm involvement and law suit success can be complicated by a top law firm's unobserved criteria for involvement in a lawsuit. To control for this form of selection bias, we employ an instrumental variable (IV) simultaneous equations regression model over our full sample, using limited information maximum likelihood (LIML) estimation (see Juergens and Lindsey, 2009), where *Top Law Firm* is the endogenous covariate.

To be a valid IV, it should have the properties that while it strongly predicts the hiring of top 5 law firm, it is unrelated to the lawsuit outcomes being examined. However, all the deal characteristics that we examine can be argued to be related to lawsuit outcomes, invalidating their use as IVs under the exclusion requirement. So, in an overidentification strategy, we use three IVs: *Same State Headquarters*, an indicator variable that takes the value of 1 if the law firm headquarters (HQ), as identified in the Martindale Hubbell database, is in the same state as the target HQ, and 0 otherwise; *Proximity to Courthouse*, an indicator variable that takes the value of 1 if the law firm has HQ or an office, as identified in Martindale Hubbell database, is in the state where the lawsuit was filed; and *Proportion Corp/Securities Litigation Attorneys*, the proportion of all attorneys in a law firm who practice Corporate and/or Securities Litigation for each Law Firm, determined from the Martindale Hubbell database.

The Martindale Hubbell data is available for the years 2005, 2007, 2009 and 2010. We hand collect 2005 numbers from Martindale Hubbell and link them to the lawsuit data of 2006 and 2007 to avoid any look-ahead bias. Likewise, we link 2007, 2009 and 2010 Martindale Hubbell numbers to our lawsuit data pertaining to 2008-2009, 2010, and 2011-2012, respectively. In our final full sample of lawsuits spanning 2006-2012, about 20% of lead law firms and target firms have HQ's in the same state, about 37% of lead law firms have their HQ (or an office) in the state where the law suit was filed, while about 55%, on average, of all attorneys employed by a lead law firm list their main practice area as Corporate and/or Securities Litigation.⁵

Economically, the choice of these IVs is justified because expertise in corporate and/or securities litigation and the geographic proximity of the law firm headquarters to the target firm headquarters, or to the location where the law suit is filed, are likely to make the law firm a more attractive lead law firm to hire. Law firm competence in the relevant field of law and its access to resources is one of the factors that Delaware courts consider in deciding whether to appoint a plaintiffs' law firm as lead counsel (Thomas and Thompson 2012). In *In re Del Monte Foods Company Shareholder Litigation*, C.A. No. 6027-VCL, Delaware Chancery Court (December 31, 2010), Delaware's Vice-Chancellor Laster stated that this factor requires the Court to consider "the proposed law firm's ability to provide effective representation." The percentage of a firm's

⁵ On average, the lead law firms in our final sample employ around 57 attorneys, on average. The average proportion of lead law firms listing themselves as experts in Corporate and/or Securities Litigation on Martindale Hubbell is 76% on average. So, our *Proportion Corp/Securities Litigation Attorneys* measure is more conservative.

attorneys that practice in the corporate/securities litigation field is a good proxy for this factor because it signals a concentration on this area.

Law firm proximity to the courthouse is important because judges may like to appoint lawyers who they know, and these are often local lawyers, which favor lead law firms that are headquartered or have an office in the state of lawsuit jurisdiction. Law firm office location was identified by several prominent plaintiffs' attorneys as an important determinant of firm selection. We informally surveyed a number of leading plaintiffs' attorneys on these measures, and they generally agreed with this conclusion. One lawyer wrote to us that "Many judges are prejudiced toward involving local firms in major litigation and are likely to have strong views about the qualifications of those firms. A judge may want to insure that a local firm has a more substantial role in what the court perceives as a major case, rather than just serving as local counsel." Another attorney wrote "Judges like to appoint lawyers who they know, who are often local lawyers. This factor would thus favor "lead" firms that are either located in Delaware (where most firms are incorporated) or which have offices in one of your other 4 jurisdictions (where both the target companies and most non-Delaware litigation would be filed)."

Note that *Same State Headquarters* is based on the geographic location of law firm HQ while *Proximity to Courthouse* is based on the geographic location of any office of a law firm. Also, note that almost half of the number of deals in our sample entails lawsuits filed in multiple states. So these two geographic IVs are different. In fact, the correlation coefficient between these two IVs is only 26%. More importantly, there is no compelling reason to expect either measure of geographic proximity to be related to current lawsuit outcomes other than through the law firm hired, especially in the presence of controls for major offer and lawsuit characteristics and fixed effects.⁶ The same holds true for concentration in corporate and securities litigation since simply because a firm has relatively more attorneys in one practice area does not indicate that they influence outcomes other than through the law firm hired.

The regression specification used is:

⁶ In a somewhat related paper, Cheng, Huang, Li and Lobo (2010) use the three-day market return after the revelation day as the IV in controlling the self-selection bias in the association between institutional lead plaintiffs and case outcomes. They justify this IV only on a statistical basis. We try and justify our IVs on both statistical and economic basis.

(2) *Higher Valued Settlements* =

$$\beta_Y + \beta_I + \beta_1 \times \text{Top Law firm} + \beta_2 \times \text{Ln Offer Size} + \beta_3 \times \text{Industry Relatedness} + \\ \beta_4 \times \text{Hostile} + \beta_5 \times \text{Target termination fees} + \beta_6 \times \text{Cash} + \beta_7 \times \text{Tender} + \\ \beta_8 \times \text{Toehold} + \beta_9 \times \text{Going Private} + \beta_{10} \times \text{Go shop} + \\ \beta_{11} \times \text{Private equity participant} + \beta_{12} \times \text{Auction} + \\ \beta_{13} \times \text{Target Regulated Industry} + \beta_{14} \times \text{Delaware filing} + \varepsilon,$$

where *Higher Valued Settlements*, is an indicator variable that takes the 1 for Consideration Settlement or Amendment Settlement (the best outcomes for shareholders), and 0 for all other lawsuit outcomes, and *Top Law firm* is the endogenous covariate. Table 7 reports the regression estimates and associated z-statistics based on standard errors robust to heteroskedasticity and adjusted for industry clustering. The first column shows that, consistent with our prior discussion, all of the IVs are significantly associated with *Top Law Firm*. As in Table 6, top law firms are significantly more associated with larger deals that are economically more meaningful, and with going private deals that can raise greater fiduciary duty issues. The second column shows that top law firms are significantly and positively associated with a higher probability of lawsuit success for plaintiffs, as defined by *Higher Valued Settlements*. Same industry deals, which are often piggy back cases where the plaintiffs' chances of success is higher, and going-private deals or deals with private equity participants, which have inherent conflicts of interest that can make it more likely that a lawsuit will succeed, are significantly associated with a higher probability of lawsuit success.

We examine the statistical validity of the instruments by performing over-identification tests (see, e.g., Krishnan et al., 2012). The *F*-statistic for the joint significance of IVs for *Top Law Firm* is above the critical value of 10 recommended by Staiger and Stock (1997). Thus, the IVs strongly predict a top 5 law firm hire. However, the *Anderson-Rubin* test statistic for over-identification yields insignificant *p*-values for *Higher Valued Settlements*, after controlling for other offer characteristics including *Top Law Firm*. So we fail to reject the joint null that the IVs are uncorrelated with the error term, which supports excluding them from the second-stage equation. Thus, our IVs satisfy the exclusion requirement of a valid instrument.

One may argue economically, although we prove otherwise statistically, that *Proportion Corp/Securities Litigation Attorneys* reflects a law firm's specialty and that this specialty is related to the kind of lawsuits it engages in and, in turn, may be related to lawsuit outcomes. Thus, in general, geography-based IVs are less susceptible to this type of concern and hence we

reexamine the results using only *Same State Headquarters* and *Proximity to Courthouse* as IVs. The third column of Table 7 shows that top law firms continue to be significantly and positively associated with a higher probability of *Higher Valued Settlements*, providing comfort that *Proportion Corp/Securities Litigation Attorneys* IV is not radically altering our main result.

Further, lawsuit success can be defined in other ways, to include other lesser but still positive outcomes for plaintiffs. The fourth column reports results explaining success redefined by *All Settlements* that takes the value of 1 for Consideration, Amendment, or Disclosure settlement, and 0 for all other outcomes. The fifth column reports results explaining success redefined by *All Settlements And Valuable Motions Granted* that takes the value of 1 for Consideration, Amendment, or Disclosure settlement as well as Injunction or Expedite Motion granted (as these are good signals about the merits of a case), and 0 for all other outcomes. Top law firms are significantly and positively associated with a higher probability of *All Settlements* as well as *All Settlements and Valuable Motions Granted*.

In sum, table 7 shows that top 5 plaintiffs' law firms are associated with statistically significant and superior outcomes for their clients. These results hold even after controlling for the fact that top law firms may get to pick cases that have superior chances of lawsuit success.

5.4 Additional Checks

A. Using Alternative Estimation Procedures

We perform robustness checks in Table 8. First we check our results of Table 7 using two alternative estimation procedures. The first column of Table 8 reports results of 2-stage Least Squares (2SLS) estimation procedure explaining lawsuit success defined by *Higher Valued Settlements* that takes the value of 1 for Consideration or Amendment settlement, and 0 for all other outcomes. The Instrumental Variables (IVs) used are the 3-vector of *Same State Headquarters*, *Proximity to Courthouse*, and *Proportion Corp/Securities Litigation Attorneys*. The second column of Table 8 reports the same results using Jackknife Instrumental Variables Estimator (JIVE) procedure, using the same IVs.⁷ Top law firms are significantly and positively associated with a higher probability of *Higher Valued Settlements*.

⁷ There is no a-priori reason to believe that 2SLS or JIVE estimators are superior to LIML; there has been some debate in the literature (see, e.g., Davidson and McKinnon (2004), Akerberg and Devereux (2006) and Blomquist and Dahlberg (1999)). Nevertheless, it is useful to check the main result for different IV estimation strategies.

B. Using Market Shares

Next we use a continuous market share variable for law firm reputation (rather than the indicator variable, *Top Law firm*). The third column of Table 8 reports results using IV-LIML estimation procedure but where *Market Share* is the endogenous covariate. *Market Share* is determined for plaintiff law firms on the basis of number of lawsuits as Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in the past 3 years. The Instrumental Variables (IVs) used are the 3-vector of *Same State Headquarters*, *Proximity to Courthouse*, and *Proportion Corp/Securities Litigation Attorneys*. Law firm *Market Share* is significantly and positively associated with a higher probability of *Higher Valued Settlements*, but only at the 10% significance level. Thus, whether a law firm is a top-5 law firm in the annual league-table rankings matters, the continuous market share variable is much less significantly associated with lawsuit success.

C. Keeping the Top Law firms constant

Thus far, we have determined *Top Law Firms* as those in the top 5 league tables constructed every year, based on rolling windows of the past 3 years. In doing so, top law firms could change from year to year. Indeed, there are 12 different law firms in the 7 years of top-5 league tables.⁸ As a robustness check, we keep the list of *Top Law Firms* constant by identifying the top 5 in the first 5 years - 2003-2007, and examine their effects on lawsuit success in the subsequent 5-year non-overlapping period - 2008-2012. The top 5 law firm, determined in this fashion are, the same as those listed in Table 3, except that Grant & Eisenhofer is replaced by Rosenthal Monhait & Goddess. In untabulated results, we find that the top 5 law firms continue to be significantly associated with *Higher Valued Settlements* at the 1% significance level.

D. Looking at the Top 10 Law Firms

In column 4 we instead use *Top 10 Law Firms* as the key explanatory variable. *Top 10 Law Firms* are significantly related to higher valued settlements at the 5% level, with the coefficient roughly half the coefficient for top five law firms. We note that in terms of market share there is

⁸ These include Bernstein Liebhard & Lifshitz, Chimicles & Tikellis, Levi & Korsinsky, Rigrodsky & Long, Robbins Umeda, Rosenthal Monhait & Goddess, and Wechsler Harwood, in addition to the names listed in Table 3.

a significant drop off in market share after the top firms and that the top firms capture most of the market with much of the variation coming within the top 5 or 10. Market share may therefore be a determinant of a significant case in a significant year and should be determined cautiously.

5.5 How do Top Plaintiffs' Law Firms Achieve Success?

To determine the reasons why top law firms achieve good outcomes for their clients, and hence enjoy high market shares in the shareholder M&A litigation market, we evaluate top law firms using several measures of lawsuit activity. We believe that lawsuit activity is a good indicator of how law firms achieve success for two reasons. First, more activity is generally associated with more effort and indicates that the law firm is pursuing a case more vigorously. Relatedly, vigorous plaintiffs' law firm activity is contrary to the "file early, then free ride" hypothesis put forth by Weiss & White (2004).

We examine litigation activity by counting the number of docket entries in our sample cases, as generally the better law firms work harder on their cases and so they should be making more filings and more docket entries. Filing injunction motions and motions to expedite further indicates litigation intensity, although it does not require as much effort as a high level of docket activity (e.g., filing a motion for expedited discovery counts as only one docket entry). Motions to dismiss are filed voluntarily by the defendants in some instances, most likely when the defendants believe a case lacks merit, and may indicate a lack of effort by the plaintiffs' law firm. Delaware filing is also included an activity indicator as the Delaware Chancery Court is sometimes said to be more demanding on attorneys than other courts in corporate cases. (Armour, Black & Cheffins, 2012).

Table 9 shows the associations between the top law firms, non-top law firms, and least active, and law suit activity, over the period 2006-2012. We see that top law firms are significantly more active than other law firms in terms of filing more motions and papers with the court (a greater number of docket entries), and by filing more injunction motions. Top law firms are also more careful in screening for case quality such that fewer motions to dismiss are

filed against them than other law firms. Top law firms also seem to depend significantly less on the Delaware Chancery Court to achieve law suit success than the least active law firms.⁹

In untabulated results, we find that Law firm resources, defined as number of attorneys employed by a law firm, does not significantly affect law firm activity or lawsuit success. Nor do number of partners or alternatively, number of associates in a law firm's payroll. This may be because individual cases are only staffed with a few lawyers and so larger plaintiffs' law firms devote their additional attorneys to filing and staffing more cases.

6. Conclusion

We examine the role of plaintiffs' law firms in shareholder class action merger litigation. Analyzing a unique, hand-collected database of 1,739 class action merger lawsuits during the period 2003 through 2012, we find that top plaintiffs' law firms create better results for their clients than other plaintiffs' law firms. We find that the top law firms are significantly and positively associated with a higher probability of lawsuit success for plaintiffs. This result holds even after controlling for the fact that top law firms may get to pick cases that have superior chances of lawsuit success. The success is achieved by top plaintiffs' law firms through a variety of strategies that include being more active than other law firms in terms of filing more motions and papers with the court (a greater number of docket entries), and by filing more injunction motions. Top law firms are also more careful in screening for case quality such that fewer motions to dismiss are filed against them than other law firms.

Our results inform the agency cost view of plaintiffs' law firms as agents and how best to address this conflict. They indicate that we should not only consider judge-centered or shareholder-centered solutions to the agency cost problems associated with plaintiffs' class action law firms. In fact, shareholder class action litigation might be best improved by courts selecting plaintiffs' law firms with more significant experience, activity and prior success. This is a particularly trenchant point since the PSLRA relies exclusively on the number of shares a law

⁹ In untabulated results we further examine lawsuit activity by conducting an ordered logit regression defined in terms of Number of docket entries taking the value of 3 if equal to or more than 100, Injunction Motion filed taking the value of 2, Motion to Expedite filed taking the value of 1, and 0 every suit else. We find that top law firms are significantly and positively associated with enhanced lawsuit activity, while Delaware filings are significantly and positively associated with enhanced lawsuit activity. Thus, top law firms appear to work harder to win their cases, and the Delaware Chancery Court appears to demand more from attorneys that file there. This table is available upon request.

firm plaintiff has to appoint lead counsel. Our findings support a more holistic view of this decision, based on the evidence that we find that there is a difference among plaintiffs' law firms' success rates and not just a difference between named plaintiffs.

References

- Akerberg, D., and P. Deverwux. 2006. Comment on "The case Against JIVE," 21 *Journal of Applied Econometrics* 835-838.
- Agrawal, A. and C. Knoeber. 1996. "Firm Performance and Mechanisms to Control Agency Problems between Managers and Shareholders," 31 *Journal of Financial and Quantitative Analysis* 377-397.
- Andrade, G., M. Mitchell and E. Stafford. 2001. "New Evidence and Perspectives on Mergers," 15 *Journal of Economic Perspectives* 103-120.
- Armour, J., B. Black, and B. Cheffins. 2012. "Delaware's Balancing Act," 87 *Indiana Law Journal* 1345-1405.
- Bao, J. and A. Edmans. 2011. "Do Investment Banks Matter For M&A Returns?," 24 *Review of Financial Studies* 2286-2315.
- Bates, T. and M. Lemmon. 2003. "Breaking up is Hard to do? An Analysis of Termination Fee Provisions and Merger Outcomes," 69 *Journal of Financial Economics* 469-504.
- Betton, S. and B. Eckbo. 2000. "Toeholds, Bid Jumps, and Expected Payoffs in Takeovers," 13 *Review of Financial Studies* 841-882.
- Blomquist, C. and A. Dahlberg. 1999. "Small sample properties of LIML and Jackknife IV estimators: Experiments with Weak Instruments," 14 *Journal of Applied Econometrics* 69-88.
- Cain, M. and S. Davidoff Solomon. 2015. "A Great Game: The Dynamics of State Competition and Merger Litigation," 100. *Iowa Law Review* 465-500.
- Cheng, A., H. Huang, Y. Li and G. Lobo. 2010. "Institutional monitoring through shareholder litigation," 95 *Journal of Financial Economics* 356-383.
- Coates, J. and G. Subramanian. 2000. "A Buy-Side Model of M&A Lockups: Theory and Evidence," 53 *Stanford Law Review* 307-396.
- Coffee, J. 1986. "Understanding the Plaintiff's Attorney: The Implications for Economic Theory for Private Enforcement of Law Through Class and Derivative Actions," 86 *Columbia Law Review* 669-772.
- Coffee, J. 1985. "The Unfaithful Champion: The Plaintiff as Monitor in Shareholder Litigation," 48 *Law & Contemporary Problems* 5-81
- Cox, J., R. Thomas and L. Bai. 2008. "There are Plaintiffs and ... There Are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements," 61 *Vanderbilt Law Review* 355-386.
- Davidoff, S. 2007. "The SEC and the Failure of Federal Takeover Regulation," 34 *Florida State University Law Review* 211-269.
- Davidson, R., and J. McKinnon. 2004. "The case Against JIVE," 21 *Journal of Applied Econometrics* 827-833.
- Eissman, M. 2014. "Latest Rulings Deal Setback to M&A Shareholder Lawsuits," *Forbes.com*, May 29.

- Fisch, J., S. Griffith and S. Davidoff Solomon. 2015. "Confronting the Peppercorn Settlement in Merger Litigation: An Empirical Analysis and a Proposal for Reform," 93 *Texas Law Review* 557-624.
- Fisch, J. 1997. "Class Action Reform: Lessons from Securities Litigation," 39 *Arizona Law Review* 533-559.
- Griffith, S. & A. Lahav. 2012. "The Market for Preclusion in Merger Litigation," 66 *Vanderbilt Law Review* 1053-1138.
- Juergens, J. and L. Lindsey. 2009. "Getting Out Early: An Analysis of Market Making Activity at the Recommending Analyst's Firm," 64 *Journal of Finance* 2327-2359.
- Klein, W. and J. Coffee. 2007. *Business Organization and Finance: Legal and Economic Principles* (10th Ed. Foundation Press).
- Krishnan, CNV., R. Masulis, R. Thomas, and R. Thompson. 2012. "Shareholder Litigation in Mergers and Acquisitions," 18 *Journal of Corporate Finance* 1248-1268.
- Krishnan, CNV., and R. Masulis. 2013. "Law Firm Expertise and Merger and Acquisition Outcomes," 56 *Journal of Law and Economics* 189-226.
- Macey, J. & Geoffrey P. Miller. 1991. "The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform," 58 *University of Chicago Law Review* 1-118.
- Officer, Micah S. 2003. "Termination Fees in Mergers and Acquisitions," 69 *Journal of Financial Economics* 431-467.
- Perino, M. 2006. "Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Action," Working Paper No. 06-0034. St. John's University School of Law, Jamaica, NY.
- Perino, M. 2012. "Institutional Activism Through Litigation: An Empirical Analysis of Public Pension Fund Participation in Securities Class Actions," 2 *Journal of Empirical Legal Studies* 368-392.
- Petersen, M. 2009. "Estimating standard errors in finance panel data sets: Comparing approaches," 22 *Review of Financial Studies* 435-480.
- Rau, R. 2000. "Investment Bank Market-share, Contingent Fee Payments and the Performance of Acquiring Firms," 56 *Journal of Financial Economics* 293-324.
- Rosenzweig, M. 1986. "Target Litigation," 85 *Michigan Law Review* 110-150.
- Servaes, H. and M. Zenner. 1996. "The Role of Investment Banks in Acquisitions," 9 *Review of Financial Studies* 787-815.
- Staiger, D. & J. Stock. 1997. "Instrumental Variables Regression with Weak Instruments," 65 *Econometrica* 557-586.
- Thomas, R. 2013. "What Should We Do About Multi-jurisdictional Litigation in M&A Deals?," 66 *Vanderbilt Law Review* 1925-1960.

Thomas, R. and R. Thompson. 2012. "A Theory of Representative Shareholder Suits and Its Application to Multijurisdictional Litigation," 106 *Northwestern University Law Review* 1753-1820.

Thompson, R. and R. Thomas, 2004. "The New Look of Shareholder Litigation: Acquisition-Oriented Class Actions," 57 *Vanderbilt Law Review* 133-209.

Weiss, E. and L. White. 2004. "File Early, Then Free Ride: How Delaware (Mis) Shapes Shareholder Class Actions," 57 *Vanderbilt Law Review* 1797- 1881.

Weiss, E. and J. Beckerman. 1995. "Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions," 104 *Yale Law Journal* 2053-2127.

Table 1
Sample Descriptive Statistics

This table reports descriptive statistics of our final sample of M&A lawsuits that spans the 10-year period Jan 1, 2003 through Dec 31, 2012, after all screens that ensure all variables required for analysis are available.

Number of Lawsuits	1,739
Number of M&A deals	472
Average number of law firms per lawsuit	4.12
Number of different law firms	336
Number of different lead/co-lead law firms	188
Number of Lead/co-lead law firms for Non-individual Named Plaintiff and charging at least \$1 million as attorneys' fees	51
Average number of plaintiffs per lawsuit	2.44
Number of M&A deals with lawsuits filed in multiple states	229
Average attorneys' fees per lawsuit	\$1.40 million
Median attorneys' fees per lawsuit	\$0.55 million
Law firm with most appearances	Robbins Geller Rudman & Dowd
Law firm with most appearances as Lead/co-lead	Robbins Geller Rudman & Dowd
Law firm with most appearances as Lead/co-lead for Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees	Robbins Geller Rudman & Dowd

Table 2
Year-by-Year Descriptive Statistics

This table shows the year-by-year descriptive statistics of our final sample of 1,739 M&A lawsuits spanning the 10-year period Jan 1, 2003 through Dec 31, 2012, after all screens that ensure all variables required for analysis are available. All variables are defined in Table A1 of the Appendix.

Year	Number of Lawsuits	Multi-State filing	Delaware filing	Dismissed	Median Attorney Fee (\$ mn)
2003	40	58.82%	64.71%	70.59%	1.10
2004	32	34.88%	58.14%	46.51%	0.45
2005	103	14.55%	60.00%	56.36%	0.42
2006	144	40.98%	45.90%	45.90%	0.47
2007	190	37.33%	44.00%	46.67%	0.59
2008	106	57.78%	48.89%	48.89%	0.85
2009	198	60.00%	66.67%	36.00%	0.70
2010	382	65.25%	72.88%	39.83%	0.58
2011	363	78.52%	79.26%	49.63%	0.55
2012	181	76.67%	78.89%	57.78%	0.50
Overall	1739	57.28%	65.27%	47.76%	0.55

Table 3
Top Law Firms

This table shows descriptive statistics of the top 5 law firms by number of deals as Lead or co-lead to non-individual named plaintiffs and receiving at least \$1 million as attorneys' fees (using past 3 year rolling windows, so that there is no look-ahead bias). The number of appearances in top-5 league tables from 2006 through 2012 is shown in the first column, and the average market share by number of deals (computed as total market share divided by the total number of years) is shown in the second.

Top Law firm	Number of Appearances	Average Market share
Robbins Geller Rudman & Dowd	6	9.82%
Grant & Eisenhofer	5	8.31%
Bernstein Litowitz Berger & Grossmann	5	7.56%
Milberg	4	5.48%
Kessler Topaz Meltzer & Check	4	4.76%

Table 4
Top Plaintiff Law Firms and Deal Characteristics

This table compares the associations between top law firms (determined on the basis of number of deals as Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in the past 3 years), non-top law firms and deal features, for the period 2006-2012. All variables are defined in Table A1 of the Appendix.

Deal/Suit Feature	Top Law firm suits	Non Top Law firm suits
Avg. Transaction Value (mn)	3918	3455
Industry Relatedness%	0.524	0.491
Target Takeover Premium %	27.86	27.06
Hostile/Unsolicited deals %	0.042	0.072
Target termination fees Indicator%	0.978	0.958
Cash deals %	0.710	0.746
Tender offers %	0.248	0.264
MBO %	0.057	0.028*
Toeholds %	0.042	0.028
Going private%	0.127	0.078*
Go Shop%	0.106	0.144
Private Equity Participant%	0.177	0.161
Auction%	0.404	0.397
Target firm Regulated Industry %	0.255	0.235
Multi-State Filing%	0.628	0.624
Delaware Filing%	0.670	0.638

*, **, and *** denote significantly different from the numbers to the immediate left at the 10%, 5% and 1% levels respectively.

Table 5
Top Plaintiff Law Firms and Deal Characteristics

This table reports the regression coefficients, and, in parenthesis, heteroskedasticity-consistent law-firm-clustered standard errors, of Logit regressions explaining the associations of top law firms and deal characteristics, for the period 2006-2012. *Top Law Firms* are determined on the basis of number of lawsuits as Lead or co-lead to non-individual named plaintiffs and receiving at least \$1 million as attorneys' fees in the past 3 years. Also reported are Pseudo R² values. Included in the regressions as controls are β_Y , a vector of year fixed effects, and β_I , a vector of bidder industry fixed effects based on the 10 Fama-French industry classifications.

	<i>Top Law Firms</i>
Ln Offer Size	0.21** (0.09)
Industry Relatedness	0.49* (0.27)
Hostile/Unsolicited deal	-1.23** (0.55)
Target termination fees Indicator	0.67 (0.77)
Cash deal Indicator	0.31 (0.30)
Tender offer Indicator	0.21 (0.27)
Toehold Indicator	0.75 (0.60)
Going private Indicator	0.67* (0.38)
Go Shop Indicator	-0.47 (0.39)
Private Equity Participant Indicator	0.23 (0.36)
Auction Indicator	0.23 (0.24)
Target firm Regulated Industry	-0.49 (0.95)
Delaware filing Indicator	0.09 (0.23)
β_Y	Yes
β_I	Yes
Pseudo R ² (%)	8.29

*, **, and *** denote significantly different from zero at the 10%, 5% and 1% levels respectively.

Table 6
Top Plaintiff Law Firms and Lawsuit Outcomes

This table shows the associations between the top law firms (determined on the basis of number of deals as Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in the past 3 years) and lawsuit outcomes, as compared to those between non-top law firms, and *Least Active Law Firms* defined as law firms that were Lead or co-lead in only 1 lawsuit in rolling windows of past 3 years, for the period 2006-2012. All variables are defined in Table A1.

Lawsuit Outcome	Top Law firm suits	Non Top Law firm suits	Least Active Law firm suits
Dismissed%	0.269	0.524**	0.575 ***
Involuntary Motion to Dismiss Granted%	0.035	0.041	0.063 *
Summary Judgment Granted%	0.007	0.015	0.013
Motion to Expedite Granted%	0.099	0.081*	0.013 ***
Disclosure settlement%	0.397	0.362	0.363
Amendment settlement%	0.227	0.072***	0.025 ***
Injunction Motion Granted%	0.014	0.017	0.000
Consideration settlement%	0.078	0.019***	0.025 ***

*, **, and *** denote significantly different from the Top-5-law-firm suits at the 10%, 5% and 1% levels respectively.

Table 7
Top Law Firms and Lawsuit Outcomes: Controlling for Endogeneity

The table reports the regression coefficients, and in parenthesis, heteroskedasticity-consistent law-firm-clustered standard errors, of Logit regressions explaining the probability of lawsuit success, where *Top Law Firms* is the endogenous covariate, which is the indicator variable for top-5 law firms determined on the basis of number of lawsuits as Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in the past 3 years. The Instrumental Variables (IVs) are a 3-vector of *Same State Headquarters*, *Proximity to Courthouse*, and *Proportion Corp/Securities Litigation Attorneys*. Included in the regressions as controls are β_Y , a vector of year fixed effects, and β_I , a vector of bidder industry fixed effects based on the 10 Fama-French industry classifications. The first column reports the associations of IVs with *Top Law Firms*. The second column reports results explaining lawsuit success defined by *Higher Valued Settlements* that takes the value of 1 for Consideration or Amendment settlement, and 0 for all other outcomes. The third column reports results explaining *Higher Valued Settlements* but when the instruments are the 2-vector of geographic IVs only. The fourth column reports results explaining success redefined by *All Settlements* that takes the value of 1 for Consideration, Amendment, or Disclosure settlement, and 0 for all other outcomes. The fifth column reports results explaining success redefined by *All Settlements And Valuable Motions Granted* that takes the value of 1 for Consideration, Amendment, or Disclosure settlement as well as Injunction or Expedite Motion granted, and 0 for all other outcomes. All variables are defined in Table A1 of Appendix.

	Top Law firm	Higher Valued Settlements	Higher Valued Settlements (using the 2-vector of geographic IVs only)	All Settlements	All Settlements and Valuable Motions Granted
Same State Headquarters	0.74*** (0.31)				
Proximity to Courthouse	0.72*** (0.27)				
Proportion Corp/Securities Litigation Attorneys	2.25*** (0.72)				
Top Law firm		1.75*** (0.27)	1.59*** (0.31)	1.10*** (0.22)	1.09*** (0.23)
Ln Offer Size	0.19* (0.11)	-0.21 (0.31)	-0.24 (0.23)	-0.10 (1.00)	-0.18 (0.78)
Industry Relatedness	0.45 (0.29)	0.96*** (0.35)	0.90*** (0.34)	0.60** (0.24)	0.45** (0.20)
Hostile/Unsolicited deal	-1.03* (0.62)	-0.06 (0.57)	-0.09 (0.53)	-0.10 (0.39)	-0.08 (3.96)
Target termination fees Indicator	0.73 (0.81)	0.26 (0.77)	0.33 (0.73)	1.13 (1.10)	1.34 (0.97)
Cash deal Indicator	0.40 (0.36)	-0.02 (0.58)	-0.02 (0.51)	-0.07 (0.26)	-0.20 (0.26)
Tender offer Indicator	0.34 (0.33)	0.27 (0.35)	0.27 (0.33)	0.28 (0.23)	0.35 (0.22)
Toehold Indicator	0.58 (0.79)	-0.68 (0.46)	-0.51 (0.49)	-0.38 (0.52)	-0.40 (0.37)
Going private Indicator	0.88** (0.42)	0.53* (0.28)	0.60* (0.31)	0.17 (0.11)	0.14 (0.12)
Go Shop Indicator	-0.68 (0.44)	-0.07 (0.12)	-0.08 (0.13)	-0.20 (0.29)	-0.20 (0.29)
Private Equity Participant Indicator	0.37 (0.47)	0.83* (0.45)	0.79* (0.45)	0.44 (0.29)	0.32 (0.29)
Auction	0.19 (0.27)	0.08 (0.34)	0.09 (0.30)	0.12 (0.21)	0.10 (0.21)
Target firm Regulated Industry	-0.43 (1.29)	1.18 (1.19)	1.18 (1.09)	0.60 (0.71)	0.66 (0.71)
Delaware filing Indicator	0.03 (0.26)	0.29 (0.18)	0.25 (0.18)	0.07 (0.21)	0.03 (0.21)
β_Y	Yes	Yes	Yes	Yes	Yes
β_I	Yes	Yes	Yes	Yes	Yes
Pseudo/Adjusted R ² (%)	27.71	14.72	13.62	12.22	11.60

*, **, and *** denote significantly different from zero at the 10%, 5% and 1% levels respectively.

Table 8
Top Law Firms and Lawsuit Outcomes: Robustness Checks

This table reports the regression coefficients, and, in parenthesis, heteroskedasticity-consistent law-firm-clustered standard errors, of Logit regressions explaining the probability of lawsuit success, where *Top Law Firms* is the endogenous covariate, which is the indicator variable for top-5 law firms determined on the basis of number of lawsuits as Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in the past 3 years. The Instrumental Variables (IVs) are a 3-vector of *Same State Headquarters*, *Proximity to Courthouse*, and *Proportion Corp/Securities Litigation Attorneys*. Included in the regressions as controls are β_Y , a vector of year fixed effects, and β_I , a vector of bidder industry fixed effects based on the 10 Fama-French industry classifications. The first column reports results of 2-stage Least Squares (2SLS) estimation procedure explaining lawsuit success defined by *Higher Valued Settlements* that takes the value of 1 for Consideration or Amendment settlement, and 0 for all other outcomes. The second column reports the same results using Jackknife Instrumental Variables Estimator (JIVE) procedure. The third column reports results using LIML estimation procedure but where the continuous variable, *Market Share* is the endogenous covariate. *Market Share* is determined for plaintiff law firms on the basis of number of lawsuits as Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in the past 3 years. The last column uses *Top 10 Law Firms* as the key explanatory variable. All variables are defined in Table A1 of Appendix.

	Higher Valued Settlements (using 2SLS procedure)	Higher Valued Settlements (using JIVE procedure)	Higher Valued Settlements (using <i>Market Share</i> as the key explanatory variable)	Higher Valued Settlements (with <i>Top 10 Law Firm</i> as the key explanatory variable)
Top Law firm	1.65*** (0.33)	1.56*** (0.38)		
Top 10 Law firm				0.70** (0.30)
Market Share			0.41* (0.24)	
Ln Offer Size	-0.23 (0.29)	-0.18 (0.28)	-0.27 (0.18)	-0.23 (0.32)
Industry Relatedness	0.99*** (0.35)	0.85** (0.35)	0.86*** (0.31)	0.95*** (0.36)
Hostile/Unsolicited deal	-0.07 (0.58)	-0.07 (0.47)	-0.60 (0.48)	-0.06 (0.61)
Target termination fees Indicator	0.22 (0.76)	0.18 (1.29)	0.07 (0.78)	0.28 (0.75)
Cash deal Indicator	-0.03 (0.20)	-0.03 (0.38)	-0.05 (0.14)	-0.02 (0.59)
Tender offer Indicator	0.29 (0.33)	0.32 (0.32)	0.33 (0.34)	0.29 (0.39)
Toehold Indicator	-0.70 (0.45)	-0.56 (0.42)	-0.16 (0.44)	-0.69 (0.45)
Going private Indicator	0.56* (0.29)	0.55* (0.29)	0.68** (0.32)	0.55** (0.27)
Go Shop Indicator	-0.08 (0.13)	-0.10 (0.15)	-0.12 (0.16)	-0.07 (0.15)
Private Equity Participant Indicator	0.80* (0.45)	0.89* (0.46)	0.94** (0.47)	0.86** (0.41)
Auction	0.07 (0.35)	0.05 (0.31)	0.11 (0.30)	0.09 (0.34)
Target firm Regulated Industry	1.21 (1.19)	1.23 (1.12)	0.64 (1.23)	1.21 (1.09)
Delaware filing Indicator	0.28 (0.20)	0.22 (0.18)	0.68 (0.54)	0.24 (0.24)
β_Y	Yes	Yes	Yes	Yes
β_I	Yes	Yes	Yes	Yes
Adjusted R ² (%)	14.39	13.99	11.07	12.02

Table 9
Top Law Firms and Lawsuit Activity

This table shows the associations between the top law firms and lawsuit activity, as compared to those of non-top law firms and *Least Active Law Firms* defined as law firms that were Lead or co-lead in only 1 lawsuit in rolling windows of past 3 years, for the period 2006-2012. All variables are defined in Table A1.

Lawsuit Activity	Top Law firm suits	Non Top Law firm suits	Least Active Law firm suits
Number of Docket Entries	99.66	74.74***	42.07***
Injunction Motion Filed	0.475	0.382**	0.300***
Motion to Expedite Filed	0.460	0.423	0.400
Motion to Dismiss Filed	0.531	0.700***	0.762***
Filing in Delaware Court	0.670	0.638	0.612*

*, **, and *** denote significantly different from the Top law firm suits at the 10%, 5% and 1% levels respectively.

**Appendix
Table A1**

Definitions of Variables

<i>Lawsuit Variables</i>	<i>Description</i>
Number of Docket Entries	The number of litigation filings as recorded on the docket for the lead case.
Injunction Motion Filed	An indicator variable set equal to 1 if a motion to enjoin the transaction is filed by the plaintiffs' law firm in a particular case and 0 otherwise.
Motion to Expedite Filed	An indicator variable set equal to 1 if a motion to expedite the proceedings in the transaction is filed by the plaintiffs' law firm in a particular case and 0 otherwise.
Motion for Dismiss Filed	An indicator variable set equal to 1 if a motion to dismiss the case is filed by either the defendants' (involuntary dismissal) or plaintiffs' law firm (voluntary dismissal) in a particular case, and 0 otherwise.
Filing in Delaware Court	An indicator variable set equal to 1 if the case is filed in in Delaware Chancery Court, the state court of Delaware for the adjudication of corporate claims and 0 otherwise. .
Involuntary Motion to Dismiss Granted	An indicator variable set equal to 1 if a motion to dismiss filed by the defendants in a particular case is granted by the court and 0 otherwise.
Summary Judgment Granted	An indicator variable set equal to 1 if a motion for summary judgment filed by the defendants in a particular case is granted by the court and 0 otherwise.
Motion to Expedite Granted	An indicator variable set equal to 1 if a motion to expedite is filed by the plaintiffs' law firm and granted in a particular case by the court and 0 otherwise.

Amendment settlement	An indicator variable set equal to 1 if settlement requires the terms of the transaction to be revised and 0 otherwise.
Disclosure settlement	An indicator variable set equal to 1 if settlement requires the target to make additional disclosure concerning the transaction, and 0 otherwise.
Injunction Motion Granted	An indicator variable set equal to 1 if a motion to enjoin the transaction is filed by the plaintiffs' law firm in a particular case, and that motion is granted by the lower court and 0 otherwise.
Consideration settlement	An indicator variable set equal to 1 if settlement provides for an increase in the consideration payable to target shareholders, and 0 otherwise.
Lawsuit Activity	Lawsuit Activity is defined in terms of Number of dockets filed taking the value of 3 if equal to or more than 100, Injunction Motion filed taking the value of 2, Motion to Expedite filed taking the value of 1, and 0 every suit else.
Higher Valued Settlements	A measure of lawsuit success that takes the value of 1 for Consideration Settlement or Amendment Settlement, the best outcomes for the plaintiffs, and 0 for all other outcomes.
All Settlements	A measure of lawsuit success that takes the value of 1 for Consideration, Amendment, or Disclosure settlement, and 0 for all other outcomes.
All Settlements And Valuable Motions Granted	A measure of lawsuit success that takes the value of 1 for Consideration, Amendment, or Disclosure settlement as well as Injunction or Expedite Motion granted, and 0 for all other outcomes.

<i>Law firm Variables</i>	<i>Description</i>
Top Law firm	The top 5 law firms based on annual league tables determined on the basis of number of lawsuits in which a law firm is Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in rolling windows of past 3 years.
Market Share	Annual Market Share of each plaintiff law firm determined on the basis of number of lawsuits as Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in the past 3 years.
Top 10 Law firm	The top 10 law firms based on annual league tables determined on the basis of number of lawsuits in which a law firm is Lead or co-lead to Non-individual Named Plaintiffs and receiving at least \$1 million as attorneys' fees in rolling windows of past 3 years.
Law Firm Resources	The number of attorneys employed by the lead law firm. The data is from Martindale Hubbell databases of 2005, 2007, 2009 and 2010. We hand collect 2005 numbers from Martindale Hubbell and link them to data of 2006 and 2007 to avoid any look-ahead bias. Likewise, we link 2007, 2009 and 2010 numbers from Martindale Hubbell to our data pertaining to 2008-2009, 2010, and 2011-2012, respectively.
Same State Headquarters	An indicator variable that takes the value of 1 if the law firm HQ as identified in Martindale Hubbell databases of 2005, 2007, 2009 and 2010, is in the same state as the target HQ, and 0 otherwise. Used as an Instrumental Variable for lead law firm selection.
Proximity to Courthouse	An indicator variable that takes the value of 1 if the law firm has HQ or an office, as identified in Martindale Hubbell databases of 2005, 2007, 2009 and 2010, is in the state of the jurisdiction of the law suit. Used as an Instrumental Variable for lead law firm selection.
Proportion Corp/Securities Litigation Attorneys	The proportion of all attorneys in a law firm who practice Corporate and/or Securities Litigation for each Law Firm, as identified in Martindale Hubbell

databases of 2005, 2007, 2009 and 2010. Used as an Instrumental Variable for lead law firm selection.

<i>Offer Variables</i>	<i>Description</i>
Transaction Value	The value of the transaction (in \$), which is the total value of consideration paid by the acquirer for the target, excluding fees and expenses.
Industry Relatedness	An indicator variable that takes the value of 1 when the bidder and target firms are from the same industry (using the 2-digit SIC code) and 0 otherwise.
Target Takeover Premium	Premium based on the price per share paid by a bidder for a public target firm's shares relative to the target's pre offer-announcement stock price 1 week prior to the announcement date.
Hostile/Unsolicited deal	An indicator variable set equal to 1 for hostile bids or unsolicited and 0 otherwise
Target Termination Fee	An indicator variable set equal to 1 for offers with a termination fee provision payable by target firms to bidders, and 0 otherwise.
Cash	An indicator variable set equal to 1 for 100% cash bids, and 0 otherwise.
Tender	An indicator variable set equal to 1 for tender offers, and 0 otherwise.
MBO	An indicator variable set equal to 1 for offers involving management buyouts, and 0 otherwise.
Toehold	An indicator variable set equal to 1 for offers where a bidder had a toehold of 5% or more, but less than 50%, in the target firm before the announcement date, and 0 otherwise.
Target-firm Regulated Industry	Communications, utilities, banks and financial companies.
Going Private Indicator	An indicator variable that takes the value of 1 when a <i>Schedule 13E-3</i> has been filed with the SEC for the transaction due to the buyer being an

	affiliated party, and 0 otherwise.
Go Shop Indicator	An indicator variable that takes the value of 1 when the merger agreement includes a provision that allows the target company to actively solicit other potential bidders for a specific limited period of time after the merger agreement has been signed, and 0 otherwise.
Private Equity Participant Indicator	An indicator variable that takes the value of 1 when one or more private equity firm is part of the purchasing group for the target firm, and 0 otherwise.
Auction	An indicator variable that takes the value of 1 when the target firm was sold in a transaction that was initiated via an auction process. An auction process for these purposes is defined as the target firm retaining an investment bank to hold a process to affirmatively solicit acquisition proposals, and 0 otherwise.
Delaware Filing	An indicator variable that takes the value of 1 when a lawsuit is filed in Delaware Chancery Court, and 0 otherwise.
Multi-State filing	An indicator variable that takes the value of 1 when a lawsuit is filed in more than 1 state, and 0 otherwise.