

# SPAC RELATED LITIGATION ANALYSIS - REVISITED

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Updated summary findings on SPAC–related securities class actions filed between January 2019 and June 2023



## About the Author



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David Abel is the Managing Attorney of USMA Law Group. His practice is focused on representing institutional investors in securities litigation and related matters. Mr. Abel has taken his past and current experiences representing institutional investors to help them and other financial companies navigate novel legal services transactions and commence litigation in foreign jurisdictions where collective actions are increasing.

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Mr. Abel began his legal career as a business analysis in the securities litigation practice group for one of the largest plaintiff law firms in the United States. He later became analyst group Director for the law firm, while also practicing as a litigating attorney, where he focused on lead plaintiff motion appointments in securities fraud class actions. In 2016, Mr. Abel co-founded USMA Law Group, a financial markets law firm based in Washington, DC, where he continues his practice.

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## Federal securities litigation following the SPAC bubble reaches its midway point.

This report provides an updated analysis to our prior report on securities class action litigation that trailed the “SPAC IPO” bubble. Additionally, this report expands the observation period from January 1, 2019 up through June 30, 2023. Highlights from our updated findings include:

- Newly proposed regulation may have paused SPAC IPOs, but the litigation continues.
- Like the SPAC IPO frenzy itself, the trailing SPAC related litigation bubble has deflated.
- SPAC related litigation is unlikely to increase unless there is a reversion in regulation and change in economic conditions.
- 1,025 SPAC IPOs took place during the observation period, with the bulk of those occurring in 2021 (613).
- 76 SPAC related litigations were filed during the observation period, with most filed in 2021 (33).
- 51 of the 76 SPAC related litigations remain active.
- 29 of the active 51 SPAC related litigations are approaching or awaiting a ruling on the motion to dismiss.
- 15 of the 76 SPAC related litigations have been dismissed.
- Most dismissals were voluntary on the part of the plaintiff and not a result of the defendant’s success on merits.
- Ten SPAC related litigations have settled or announced a tentative settlement.
- The largest settlement amount of \$35 million was also the first announced settlement for the cohort.
- The average settlement amount is a little less than \$12 million.
- Most of the SPACs subject to federal securities litigation are small cap companies.
- Relatively low settlement values are impacted by relatively low-class wide damages for matters in which the primary defendant is a small cap company.
- Numerous settlements and dismissals are likely to be announced in the coming months, which could dramatically shift the dismissal and settlement outlooks.

### SPACs Background

In June 2022, we published an initial report on federal class action litigation related to the public offerings of Special Purpose Acquisition Companies (SPAC) filed between January 1, 2019 and April 30, 2022. The initial report highlighted a wave of litigation that followed the SPAC IPO bubble of 2021. Among other things, it also correctly projected that proposed regulation would substantially reduce the volume of SPAC IPOs, but securities litigation against completed (flawed) SPAC offerings would continue. Nevertheless, because of the infancy of most of the litigation filings, it was difficult to provide an outlook on how the lawsuits might progress. We now have a better (though incomplete) picture. Accordingly, this report includes an updated analysis on the status of SPAC-related litigation for an expanded observation period up through June 30, 2023.

## SPAC IPO Frequency Since 2019

SPAC IPOs were not uncommon in 2019 but exponentially peaked by the year 2021. The offering frenzy dramatically reversed course in early 2022 when the Securities Exchange Commission (SEC) proposed stricter regulations for SPAC IPOs. Deteriorating economic conditions since then have also curbed SPAC IPOs, as well as the IPO market generally.

The following table shows only 59 SPAC IPOs occurred in 2019. SPAC IPOs exploded to 247 during 2020, an over four-fold increase from the prior year. In 2021, there were 613 SPAC IPOs, more than double the amount from the prior year. SPAC IPOs then declined dramatically to 86 for 2022. At mid-year 2023, only 19 SPAC IPO's have occurred, on pace to be roughly half of the number of SPAC IPOs for 2019. The 4.5-year period experienced 1,025 SPAC IPOs in total.

Sector	SPAC IPOs
2023 (Jan. - Jun.)	19
2022	86
2021	613
2020	248
2019	59

## SPAC—Related Federal Securities Litigation Since 2019

### Annual Federal Securities Actions Filings – January 2019 to June 2022

Like the SPAC IPO trend itself, the trailing SPAC litigation bubble has also deflated. We appear to be on the tail end of the SPAC IPO litigation wave for new class action filings. Further, the existing cohort of SPAC litigations are approaching a mid-way point with many of the matters having their outcome decided in the coming months.

In hindsight, a trend for federal securities class actions involving SPACs can be observed as beginning in 2019. Though, filings then were not significant to the total number of annual class action filings. As reflected in the following table, a total of 76 SPAC-related lawsuits were filed during the 4.5-year period. SPAC litigation spiked in 2021 to 33 actions, continued at an accelerated rate for the first few months of 2022, and then dramatically tapered up through the first half of 2023. At this rate, SPAC-related litigation may fall to 2019 levels by 2024.

Year	SPAC Related Litigation Filings
2023 (Jan. - Jun.)	76
2022	23
2021	33
2020	7
2019	6

### Types of Legal Claims Against SPACs

As before, we define a SPAC litigation as a class action lawsuit filed in federal court asserting claims under the federal securities laws. Most of the SPAC related litigation asserts securities law violations under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. Accordingly, false and misleading statements and/or omissions are a common basis for the claim—in this instance, misconduct related to the offering is the typical allegation. Further, SPAC related litigation typically progresses in the same manner as with any other securities fraud class action.

### Status of SPAC–Related Filings

Most of the 76 SPAC related securities class actions filed since 2019 are still active. As shown in the following table, 51 actions, or 68% remain active. Fifteen have been dismissed and nine have settled.

SPAC–Related Actions Status

	2019	2020	2021	2022	2022 (Jan-Jun)	Total
Active	1	1	25	18	6	51
Dismissed	5	3	5	1	1	15
Settled	0	3	3	4	0	10
Total	6	7	33	23	7	76

### Active Cases

As summarized in the following table, analysis into active SPAC related litigation indicates 29 of 51 active cases are at the motion to dismiss phase. Either the parties were briefing the defendant's motion to dismiss the complaint, or briefing on that issue had completed and the parties were awaiting a court ruling. Therefore, the current outlook on dismissals and settlement recoveries could dramatically shift in the coming months.

Lead Plaintiff Briefing	4
Amended Complaint Drafting	8
MTD Briefing	29
Discovery and Class Certification Briefing	8
Mediation	2
<b>Total</b>	<b>51</b>

It is noteworthy to stress that overcoming the motion to dismiss is a critical threshold for plaintiffs in securities class action litigation. If the defendant's motion is denied, the case moves into issues of discovery, class certification and possible mediation. Moreover, if denied, a case has historically shown a much greater chance of obtaining a settlement. Ten cases are currently in this phase. On the contrary, if the motion is granted, the case is dismissed and usually ends.

### Dismissed Cases

Of the 76 active litigations, 15 have been dismissed. As indicated in the following table, most of these dismissals were voluntary, meaning the plaintiff dismissed its own case. Further, most of the voluntary dismissals involved merger and acquisition litigation where successful outcomes often only yield changes in disclosures for proxy statements rather than any meaningful shareholder damages claims. Accordingly, the early dismissal numbers are plaintiff driven rather than an indicator of the defendant's ability to have the complaint dismissed.

Dismissed, on appeal	1
Dismissed, leave to amend	1
Dismissed with prejudice	2
Voluntarily dismissed	11
<b>Total</b>	<b>15</b>

### Settled Cases

Of the 76 SPAC litigations, ten have settled or announced a tentative settlement. The following table provides the settlement amounts with three cases that have yet to announce the settlement amount (TBA). The first SPAC-related litigation settlement was announced in April 2021 when Akazoo S.A. announced a partial settlement in the amount of \$35 million. Interestingly, no other settlement to date has come close to exceeding that amount.

Primary Corp. Defendant	Filing Year	Settlement Amount
Akazoo S.A.	2020	\$35,000,000
Clover Health Investments Corp.	2021	\$22,000,000
Triterras, Inc.	2020	\$9,000,000
Talkspace, Inc.	2022	\$8,500,000
Bakkt Holdings, Inc.	2022	\$3,000,000
Electric Last Mile Solutions, Inc.	2022	\$2,700,000
Embark Technology, Inc.	2022	\$2,500,000
Exela Technologies, Inc.	2020	TBA
Stable Road Acquisition Corp.	2021	TBA
Faraday Future Intelligent Electric, Inc.	2021	TBA

The average amount of the seven known settlement values is approximately \$11.8 million, with the mean amount closer to \$7.4 million. While merits of an action play a role in settlement value, the potential class wide damages may be equally important. As discussed below, most of the SPAC related litigations involve small cap companies with relatively low class wide damages. Accordingly, it seems reasonable that the relatively low settlement values are simply a product of the limitation on available damages to be claimed.

## Market Capitalization Losses of SPAC Defendant Corporations

A review of current market capitalization for the primary corporate defendants in the SPAC related litigation shows that most companies traded as a small-cap stock (less than \$2 billion in market capitalization). Current market capitalization was available for 65 of the 76 primary SPAC Defendant entities. As reflected in the following table, 53 companies, or approximately 81%, have current market capitalizations under \$2 billion (measured post alleged fraud revelation price declines). Nine companies were classified as Mid-Cap (\$2 billion-\$10 billion) and only three companies were classified at Large-Cap (greater than \$10 billion). The median market capitalization was \$531 million.

### Market Capitalization of SPAC Defendants

Small-Cap < \$2 billion	Mid-Cap \$2 billion - \$10 billion	Large-Cap > \$10 billion
53	9	3

## Market Capitalization Losses of SPAC Defendant Corporations

Theoretical maximum possible class-wide damages for a securities fraud class action can be estimated by multiplying the price decline due to an alleged fraud revelation and the number of impacted class shares traded (i.e., float) during the relevant period. Using this methodology, class-wide market capitalization losses were able to be calculated for 66 of the 76 SPAC-related securities class action filings. A summary of market capitalization losses is provided in the following table.

< \$200 million	> \$200 million and < \$1 billion	> \$1 billion
31	22	13

As reflected, class-wide damages are not expected to exceed \$200 million for most of the SPAC related litigations. The calculations revealed that for 31 of the measurable filings, nearly 47% of the actions, market capitalization losses were less than \$200 million. Similarly, the median market capitalization loss for the 66 cases is \$216 million. Twenty-two of the actions had market capitalization losses between \$200 million and \$1 billion and 13 actions had market capitalization losses greater than \$1 billion. For 19 of the 66 measurable actions, market capitalization losses exceeded the respective company's current market capitalization.

As discussed above, market capitalization losses can be a top end limitation on the amount of damages that can be claimed by a class. In reality, expert damage analysis typically finds class damages to be measurably lower than theoretical maximum damages. Further, any case that settles is a compromise by definition and typically results in plaintiffs receiving cents on the dollar of their actual damages claim. This concept appears to be coming to fruition by evidence of the ten known SPAC litigation settlement amounts thus far.



- See David Abel, SPAC FEDERAL SECURITIES LITIGATION ANALYSIS: Summary findings of SPAC-related federal securities litigation filed between January 2019 and April 2022, USMA Law Group & Battea (June 2022). Available at [https://usmarketlaw.com/wp-content/uploads/2022/06/USMA\\_BGLR-WP-SPAC-Federal-Securities-Litigation-Analysis.pdf](https://usmarketlaw.com/wp-content/uploads/2022/06/USMA_BGLR-WP-SPAC-Federal-Securities-Litigation-Analysis.pdf)
- Summary background information on the development of SPAC activity and subsequent litigation is provided in the initial report.
- It should be recognized that unsatisfactory conditions for the IPO market at large are also contributing factors for decreased SPAC IPO activity.
- Source: SPAC Analytics available at <https://www.spacanalytics.com/>
- See Janeen McIntosh and Svetlana Starykh, Recent Trends in Securities Class Action Litigation:2019 Full-Year Review, NERA (Feb. 12, 2020) (reporting 433 cases filed in 2019. Available at [https://www.nera.com/content/dam/nera/publications/2020/PUB\\_Year\\_End\\_Trends\\_012120\\_Final.pdf](https://www.nera.com/content/dam/nera/publications/2020/PUB_Year_End_Trends_012120_Final.pdf)
- While this report does not include an analysis of state law claims, it is worth noting that substantial shareholder litigation has been filed against SPAC entities in state courts during the Relevant Period. Much of the state court litigation is filed in the Delaware Chancery and New York where breach of fiduciary duty claims, and derivative actions are common.
- Active is defined as not having reached a final resolution of dismissal, settlement or trial judgement.
- Market capitalization losses are calculated based on the respective complaint's alleged fraud-caused price decline(s) multiplied by the relevant float (affected shares).

## About Us

### U.S. Market Advisors Law Group PLLC

U.S. Market Advisors Law Group PLLC (“USMA Law Group”) represents financial market participants in complex litigation.

The attorneys and professionals of USMA Law Group have deep experience in civil litigation and financial markets. Principals of the firm have worked for large class action law firms, business and capital market focused law firms, market regulators, risk & compliance advisory firms and have created financial technology companies to facilitate trading and regulatory compliance on global financial markets.

Our practice focuses on guiding clients through the legal landscape of significant and complex US class actions and to navigate global collective action strategies for investment recovery.

### Battea Global Litigation Research, Inc.

Battea Global Litigation Research, Inc., (“BGLR”) provides specialized Securities and Antitrust Litigation and Settlement Research for investor Class and Collective Actions taking place in the United States and Internationally.

The Company’s analysts and experts have distilled content, collected, and performed statistical outcome analysis across several thousand litigation cases, settlements, and settlement implementations. The Company is actively tracking all current litigations and settlements.

Combining academic and seasoned practitioners expertise on financial market operations, market structure, trading, economics, finance with significant insight and research of litigations and settlements, Battea Class Action Litigation Research Inc., is one of the world’s most proficient analysts within its field.

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