

# Recent Trends in Parallel Derivative Action Settlement Outcomes

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A [new report by Cornerstone Research](#), a top consulting and expert testimony firm, highlights recent trends in settlements of derivative lawsuits brought in parallel to securities class actions.

Derivative lawsuits refer to lawsuits brought by shareholders on behalf of a company. Often, derivative actions take the form of “follow-on” lawsuits to securities class actions – meaning they are based on the same underlying allegations in the securities class actions concerning the same purported false or misleading statements, but allege resulting injury to the corporation or related breaches of fiduciary duty arising out of the conduct alleged in the class action.

According to the report – which analyzed 110 parallel derivative action settlements from 2019 to 2023 – **nearly half of all securities class action settlements had a parallel derivative action**. And these parallel derivative suits were correlated with higher securities class action settlement amounts. The median settlement amount for securities class actions sampled was \$14.5 million, with an observed 36% premium for settlements of class actions with accompanying derivative claims. At the same time, Cornerstone reported that the percentage of class action settlements with an associated derivative action in 2023 was the lowest it had been since 2011.

The report examined other recent trends in derivative actions – for those parallel to a securities class action and not. Read on for insights about monetary and nonmonetary settlements, plaintiff attorneys’ fee awards and common venues.

## Trends in monetary and nonmonetary derivative settlements

Of the parallel derivative action settlements sampled, monetary settlements were demonstrably less common than nonmonetary settlements – only 26% contained a monetary settlement component. Eighty-seven percent contained corporate governance reforms, which are also known as therapeutic provisions (some contained both a monetary settlement component and corporate governance reforms). These therapeutic provisions ranged from enhancements to board independence (e.g., adding independent directors) and revisions to charters of key committees (such as audit, compensation or disclosure committees) to case-specific reforms (e.g., strengthening insider trading policies).

The study observed that of the 29 cases with a monetary component, the median derivative settlement was \$8.9 million (or 26% of the associated securities class action settlement). Additionally, monetary derivative settlements were more common in cases with larger securities class action settlements, which the study noted could suggest that monetary settlements are correlated with the size or strength of the class action allegations. Monetary settlements also were more common when associated Securities and Exchange Commission (SEC) actions or criminal charges were present.

Notably, monetary settlements were more common in certain venues. Three courts – the Delaware Court of Chancery, the US District Court for the District of Delaware and the US District Court for the Southern District of New York – accounted for almost half of all monetary settlements but only about one quarter of all nonmonetary (or therapeutic) settlements.

## Plaintiff attorney fee awards markedly higher in monetary settlements

Though the study found that settlements with a monetary component were less common than nonmonetary settlements, it found that monetary settlements were correlated with higher plaintiff attorneys’ fee awards. In fact, the median plaintiff attorneys’ fee award for the nonmonetary settlements (\$630,000) was 79% lower than that for the median monetary settlements (\$2.9 million).

## Derivative filings generally declined but may be on the rise

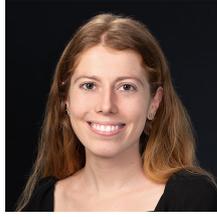
In terms of derivative filings generally, the study noted that while derivative filings accelerated from 2015 to 2020, they decelerated in 2021 and 2022, with a slight uptick in 2023. That deceleration may explain why the percentage of class action settlements with associated derivative actions was the lowest in 2023 than it had been since 2011. However, the study’s authors theorized that an uptick in derivative settlements of more than \$50 million – 16 of which occurred since 2020 (out of 29 settlements between 2005 and 2023) – may encourage additional derivative suits in the coming years.

This may be evidenced by the increase in filings in federal court seen in 2023, as compared to 2021 to 2022.

## Contributors



**Tijana Brien**  
[Bio](#)



**Anne Bigler**  
[Bio](#)



**Sarah Topol**  
[Bio](#)

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